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Official Report of Debates (Hansard)

Thursday 29 February 1996

Journal des débats (Hansard)

Jeudi 29 février 1996



**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Land Use Planning
and Protection Act, 1995**

**Loi de 1995 sur la protection
et l'aménagement du territoire**

Chair: Steve Gilchrist
Clerk: Douglas Arnott

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Thursday 29 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Jeudi 29 février 1996

*The committee met at 0910 in room 228.*LAND USE PLANNING
AND PROTECTION ACT, 1995LOI DE 1995 SUR LA PROTECTION
ET L'AMÉNAGEMENT DU TERRITOIRE

Consideration of Bill 20, An Act to promote economic growth and protect the environment by streamlining the land use planning and development system through amendments related to planning, development, municipal and heritage matters / Projet de loi 20, Loi visant à promouvoir la croissance économique et à protéger l'environnement en rationalisant le système d'aménagement et de mise en valeur du territoire au moyen de modifications touchant des questions relatives à l'aménagement, la mise en valeur, les municipalités et le patrimoine.

The Chair (Mr Steve Gilchrist): Seeing a quorum present, I call the meeting to order.

Mr Ernie Hardeman (Oxford): After further consultation, the government is still of the opinion that the 90 days in Bill 20 is appropriate rather than extending to 120 days. If an application is not proceeding and local council is not in the process of making a decision, we do not feel it appropriate that the applicant should have to wait 120 days before they would be allowed to appeal it to the Ontario Municipal Board. We feel that if the application was proceeding, it would be to the advantage of all concerned not to proceed with the appeal, but we do think the option should be there if things were not proceeding in the appropriate manner. So we will not be supporting the amendment.

The Chair: Any further discussion on that motion?

Mr Jean-Marc Lalonde (Prescott and Russell): You say that the developer will have to proceed with the appeal to the OMB, but you have to remember that it is going to incur some costs to the municipality to go to the OMB. This is what we're looking at. If the municipality has to hire a consultant and then hire planners to be in front of the OMB after, it's going to be a cost added.

One thing I said yesterday is that most of the municipalities have a bylaw that has a set fee for a zoning amendment or official plan amendment. They will have to come up with a new bylaw to change the fee or change the text within their bylaw that if it goes to the OMB, additional costs will be added to the bill.

Ms Marilyn Churley (Riverdale): Mr Lalonde makes a very good point, and it was made yesterday. For what reason does the minister not want to reconsider this? I mean, he makes a very good point, and obviously government members felt as well that a good point was being made here. Perhaps you explained it in your

opening remarks about this, but I still don't understand why you're not willing to consider this.

Mr Hardeman: As to the cost of the application or the cost to the municipality of going to the Ontario Municipal Board, the cost of doing that would be identical whether it was done at the 90-day deadline or whether it was done at the 180-day or the 120-day deadline, for that matter. The reason the government feels it inappropriate to extend that is that we believe that in situations where council is not prepared to make a decision, 90 days for seeing whether they are or are not going to do that is sufficient time.

In those situations where the process is under way but is being delayed for certain studies or certain things that the planning department is doing that they could not accomplish in the 90 days, there would be absolutely no benefit to anyone requesting to go to the OMB because they have reached a 90-day deadline. They would in all probability carry on in that process to reach a conclusion so council could make a decision. There would be no benefit to anyone to taking a no decision from council and going to the Ontario Municipal Board unless they were convinced that they could not proceed in a timely fashion with the local municipality.

We see this as a way of shortening the time frame but not really penalizing anyone in the process.

Mr Lalonde: In the past, some municipalities had a hard time to meet those 180 days, and I agree with the PA, Mr Hardeman, that probably a municipality didn't proceed fast enough; they just kept putting it to the side. But cutting it down by half, 50%, from 180 days to 90 days, we think is going a little bit too far.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Those contrary? I deem the amendment to fail.

I believe there were successful amendments to section 9, so I'll put the question. Shall section 9 carry as amended? All those in favour? Contrary? That section carries.

Seeing no amendments put forward for sections 10 through 12, are there any comments, questions or suggestions for sections 10 through 12?

Seeing none, I'll put the question. All those in favour that sections 10 through 12 carry? Contrary? Those sections carry.

Are there any comments, questions or suggestions regarding section 13?

Mr Hardeman: I move that clause 22(1)(a) of the Planning Act, as set out in section 13 of the bill, be struck out and the following substituted:

"(a) forward a copy of the request and the information and material required under subsection (4) to the appro-

priate approval authority, whether or not the requested amendment is exempt from approval; and."

Ms Churley: Okay, tell us what that means.

Mr Hardeman: This is a consequential amendment to remove the phrase that the prescribed information is "required by council due to changes under subsection (4)." The current provision provides that upon receipt of a request to amend the official plan, the council shall forward the prescribed information material that a council may require by bylaw under subsection 22(4) to the approval authority. The provision that council may pass a bylaw before it can require the proponent to submit the prescribed information and material is to be removed from subsection 22(4) because it may give the erroneous impression that council can add to the prescribed information by bylaw. The provision will specify that the proponent must submit the prescribed information and material to council on a private official plan amendment whether or not the council passes the bylaw. The submission of the prescribed information will trigger the time period for the right of appeal to begin.

In simple terms, the prescribed information will be in the bill as that which is designated by the minister. The municipalities will not be able to increase the prescribed information which triggers the time starting for an appeal. When an applicant puts in an application with the ministry-prescribed information the clock starts to tick. The municipality cannot add information to that list and delay the starting of the time frame from the introduction of the application to the appeal period.

Ms Churley: To be even more simplistic on this, can you give me an example, a very concrete example of a situation where that could happen and delay things? I don't quite understand where this is coming from.

Mr Hardeman: As the minister has prescribed this certain group of criteria that has to be met to be a completed application, the municipality may decide that it would require more on that application to make an educated decision on that application. If it was a development application, it may require a market study for council to adequately make a judgement on that application. That would not be necessarily a required criterion in the list that the minister has prepared. This is to make sure that the time starts when they file the original application with the prescribed information, not with that information that the municipality has prescribed beyond that.

Ms Churley: So within that time frame they can prescribe, but after that deadline that's it?

Mr Hardeman: No. The prescribed information from the minister is the only thing required by any applicant to start the clock on an application. The municipality may require more information in the process of reviewing the application, but the time lines are ticking on.

Ms Churley: But the clock starts there; I see.

0920

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? I deem the amendment to pass.

Are there any further amendments to section 13? I think the NDP one is the next one there.

Ms Churley: I move that clause 22(1)(b) of the Planning Act, as set out in section 13 of the bill, be

amended by striking out "65 days" in the first line and substituting "120 days."

This is again dealing with time frames, in this case for municipalities to deal with applications to amend the official plans. The current legislation provides that it must be referred to a public meeting after 120 days. The reduced time frame neither permits adequate study of major changes to directions established by the municipal council, nor does it recognize official plans as documents with some degree of permanence. It assumes official plans can be constantly amended as though they have no long-term substance. While the change might seem to help streamline the process, once again it's going to lead to difficult and time-consuming debates about where exactly the municipality is headed. So time will be lost, not saved. I think it's important that we bring the time frame back to 120 days to permit for greater public participation.

This comes back to the same argument I've made time and time again throughout this bill and that you'll hear more of, that the public is not the problem here. Public participation, in my view and I think the public's view and I'll bet you in many municipalities particularly a developer's view—things get held up at the bureaucratic level constantly. Reducing the time for public participation is just not fair. It's not getting at some of the real problems.

This is a case where once again throughout the bill you're going to find out that you're going to lose time, you're not going to save time, so on both counts: You're reducing time for public participation, and it's not going to save time. If you look at it from the proper perspective here and see what's really going on, you wouldn't do this. I assume the parliamentary assistant is going to dispute that, and we're not going to agree.

I think Mr Sewell made it very clear after his extensive consultation and his really profound knowledge of how the system works and where the problems are. He has a tremendous amount of expertise in the area that we really should pay attention to. He's convinced that time will be lost here, not saved. I don't know if those comments were taken into account at all by the government when it looked at reducing this time frame.

Mr Hardeman: I just want to point out that the time frame that's being proposed to be extended is in fact the time frame to get to a public meeting. It is not an opportunity to prohibit or to eliminate the public participation; it's the time line between which a private amendment to the official plan is proposed and the time which the municipality has in order to call the public meeting for that public participation. So we think that the time line of the proposed time is appropriate.

Mr Gilles Bisson (Cochrane South): With respect, parliamentary assistant, I think you're looking at clause 22(1)(b); we're talking about clause 22(1)(a) here. Clause 22(1)(a) is the "forward a copy of the request and the information and material...under subsection (4)."

No, I apologize. I'm looking at the government motion. Excuse me.

Mr Hardeman: Thank you. I think my former remarks stand.

Mr Bisson: They do.

Mr Hardeman: It is the time frame between the time that the clock started to tick on the amendment and that

the municipality must hold a public meeting for public participation.

Mr Bisson: Okay. Now we're on the clause that I did want to make a comment on. Just for clarification first, clause 22(1)(a) we haven't dealt with yet, have we? The government motion.

The Chair: Clause 22(1)(a)?

Ms Churley: Yes.

Mr Bisson: Is has been dealt with?

The Chair: It was passed.

Mr Bisson: I forgot to turn the page. Very good. Thank you.

On the subsection 22(b) in regard to the 65 days, the question I would have is, what was the notice requirement pre-Bill 163 for the public meeting?

Mr Hardeman: I'm informed that it was 90 days in 163.

Mr Bisson: Okay. You're saying it went from 90 days to 120 days under Bill 163.

Mr Hardeman: My apologies; a correction. It was 120 days.

Mr Bisson: So it stayed at 120 days. I thought so. The point here is that often, as you well know, when amendments to the official plan are sought because of a particular development, one of the problems that we encounter is that there's always somebody in the area who has views one way or another that they'd want to express in regard to the particular amendments that are being sought. My experience has been, in the communities I have dealt with—allowing the proper amount of time for the public to be involved, number one, but more importantly, I would say for the public to be informed only adds and strengthens the planning process to make sure that people have an adequate opportunity to find out that the public meeting is going to happen so that they're able to prepare themselves to go there, they're able to take a look at what the council is proposing on behalf of the applicant and are able to come together to that meeting with some understanding of what the issue actually is.

I'm saying the gist of all this is that if you have a public meeting and it's where people are just coming in off the mark—"I just heard about it two days ago and I'm upset and I'm coming down in order to voice my opinion"—compared to trying to get people to come in with as much information as possible so that you can have a logical debate and a good presentation, I think the time required under 163 was not all that onerous at 120 days. I think it only strengthens the process. People are able to come into that meeting much more informed. Often what happens, and I don't know why this is—it's just the way it is—most people tend not to find out about these things until fairly late into the process. I worry somewhat that the 65 days is going to be inadequate in allowing the public sufficient time to get prepared to come to the meetings and even to find out about them.

The question I'm asking the parliamentary assistant is—I asked you this question earlier yesterday—do you believe that the planning process could be made stronger by greater public involvement?

Mr Hardeman: No, I don't believe that the planning process would be strengthened by removing public involvement.

Mr Bisson: That's not what I asked. What I asked was, do you not believe that the planning process is made stronger by public involvement?

0930

Mr Hardeman: I believe Hansard will show that I did answer that question quite directly yesterday.

Mr Bisson: And the answer is?

Mr Hardeman: Yes.

Mr Bisson: If your answer is yes, to have the public involved, number one, you need to have sufficient time for them to find out; and number two, to get ready so that they can properly understand the issue coming into the meeting. I'm trying to say to you that I've seen examples in my community where people have found out, even though the requirements—that's why I asked the pre-163 issue. I can think of two projects, amendments to subdivision plans, where people came to the meeting, finding out maybe a week or two before, and that was at 120 days. How are they going to find out within 65, is what I'm saying.

Mr Hardeman: In the process, if the time lines would be changed—this is the time line that requires municipalities to hold that public meeting—if you lengthen that time line, it does increase the length of time involved in the planning process, but the notification times would also in all probability be extended. So the length of time that the public would have to participate, coming into the public meeting, would in all probability not be lengthened. They would find out about the application at the three-month interval as opposed to finding out at the one-month interval, and the public meeting would be held approximately the same distance from the notification and the public meeting. So we feel this is an improvement in the time line of getting an application approved.

Mr James J. Bradley (St Catharines): It's a problem for the public, but the background problem, I emphasize again for everybody concerned, is that all levels of government, including municipalities, are reducing staff. While I recognize we're talking about something more in the public domain here, the preparation time available to the municipality is also reduced. I'm not convinced, with the drastic cuts we're seeing in the Ministry of Municipal Affairs and Housing and other ministries, in the municipalities themselves and in the various agencies, boards and commissions, that we're wise in moving this time line as your bill suggests to the extent that you have suggested. There may have been a compromise somewhere along the line that you might have found, but this is a fairly substantial movement on that date. I think you're going to find problems arising as a result of this, which is why I support the motion.

The Chair: Any further comments? Seeing none, I'll put the question.

Ms Churley: Recorded vote.

Ayes

Bisson, Bradley, Churley, Lalonde.

Nays

Baird, Carr, Fisher, Galt, Hardeman, Murdoch, Smith.

The Chair: I deem that amendment to fail. Any further amendments?

Mr Bisson: We have another motion, section 13 of the bill, clause 22(2)(b) of the Planning Act.

I move that clause 22(2)(b) of the Planning Act, as set out in section 13 of the bill, be amended by striking out "65 days" in the first line and substituting "120 days."

I guess it's the same argument. The government voted in opposition to the first amendment. They're obviously going to vote opposed to this one.

Just by way of example, I'll give you an idea of what we're trying to get at here. The city of Timmins, in preparing to build a second river crossing across the Mattagami River was quite a public process. I would say all the people knew about that project for some 10 years. It was sought after first of all under a Conservative government, through Alan Pope as our sitting member at the time, it was sought through the Liberal government, it was sought finally through the New Democrats, and I'm glad to say we were able to deliver it.

The point I'm getting at here is that even though this was a very public process where there was hardly anybody who did not know about this project going forward, it required a change to the official plan because of where they wanted to put the access roads coming into the bridge. They needed to change it because they were going to cut right across what was on the official plan a subdivision, so there needed to be some changes from residential to industrial, if I remember correctly.

That's why I asked the question a little while ago of how long it was pre-163. The notifications that were given to the public in order to come to the meeting, in order to take a look at them—if I remember correctly, that meeting took place shortly before I was elected, or just after 1990. There were I would say a lot of people who showed up at that meeting, but what really struck me was the number of people there who said they had only heard about this particular meeting within a fairly short period of time a couple of weeks before.

I guess I come back to the same point again. With such a public project, which everybody knew was going on and didn't find out about the notice of the meeting until two weeks before the 120-day deadline, I wonder how well people are going to be prepared to do that within 65. I would repeat the argument from Mr Bradley, that with the reduction in staffing that municipalities are going to have to do to their planning departments and to their municipalities overall because of provincial cuts, they're really not going to have the staff to be able to deal with this adequately, to do the kind of outreach that happened at that time, where the city of Timmins was very proactive in getting the public involved.

I didn't convince you?

Mr Hardeman: As the member said, I think it's quite evident that this is an identical motion to the previous one as it relates to planning boards as opposed to council. I point out that in a previous amendment, to the act, that was dealt with, we have included the fact that we have a 20-day period where the official plan amendment must be presented to the public prior to the meeting. I think that part of it makes this system far improved over Bill 163, where though there were longer days to call the public meeting, no information was mandated to be given to the public to help in their deliberations prior to that public meeting.

Though the time frames are somewhat shorter, we think that the involvement of the public will be increased and their ability to deal with the application will be increased because they will be provided with information prior to that meeting.

Mr Bisson: I hear what you're saying, but I think it's not a bad idea with regard to the other amendment you put forward with regard to requiring the information that has been put forward.

I just want for the record to show that I really believe you need to have, and that for good planning to happen there has to be, public participation, and to have public participation, you need to have adequate time to get people to organize and mobilize and come to those meetings.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? That amendment fails.

Mr Hardeman: I move that subsection 22(4) of the Planning Act, as set out in section 13 of the bill, be struck out and the following substituted:

"Prescribed information

"(4) A person or public body that requests an amendment to the official plan of a municipality or planning board shall provide the prescribed information and material to the council or planning board."

This is a clarification for dealing with the prescribed information, as prescribed by the minister, that it must be provided for the clock to start to tick on an application, that the municipality cannot by bylaw require further information, but the proposal or the private amendment must provide all that required information in its application.

The Chair: Any further comment? All those in favour of the amendment? Contrary? That amendment is deemed passed.

Mr Bradley: I move that subsections 22(4) and (5) of the Planning Act, as set out in section 13 of the bill, be struck out and the following substituted:

"Required information

"(4) A council or a planning board may require a person or public body that requests an amendment to its official plan submit such information and material as the council or board considers necessary to determine the matter."

Mr Hardeman: On a point of order, Mr Chairman: I believe that's a resolution or amendment totally contrary to the amendment that was just passed.

Mr Bisson: What should have happened is that we should have dealt with the opposition motion first, and then the government motion. I think there's been a bit of a slipup here.

Mr Bradley: What happened was, in our chronologically ordered one, the government amendment came first, so I let the government amendment come first.

Mr Bisson: That's how we ended up that situation.

Mr Bill Murdoch (Grey-Owen Sound): What you're saying is you want to use yours instead of ours.

Ms Churley: Well, the difference is, it gives council discretion.

The Chair: The clerk informs me it can be considered. Mr Bradley.

Mr Bradley: All right, I will proceed with the little speech on it.

This motion allows municipalities to determine by bylaw what constitutes a complete planning application with regard to an official plan amendment. The existing act and the Ministry of Municipal Affairs and Housing can determine in part what constitutes a complete application.

Currently, a complete application as defined does not include enough information for council to make an informed decision on the planning merits of an application. For example, a preliminary storm water management report is not prescribed information for subdivision applications, nor is a soil study if the site was formerly used for industrial purposes.

0940

In such instances, how can a municipality make a sound decision that safeguards the interests of the community and the environment? When presented with an inadequate application, the time limits prescribed in the act will continue to run, and a proponent may then appeal to the OMB if a decision has not being made.

Municipalities must have the authority to pass a bylaw setting out what information is required for a complete application in addition to the legislated and provincial prescribed information. This will ensure better and appropriately local implementation of planning decisions. Neither Bill 20 nor Bill 163 achieve the intent of the complete application content to reduce the number of files contained within the planning system that contain inadequate information and to make it clear to applicants what will be required in the application.

Municipalities were simply asking that municipalities be able to pass an additional bylaw setting out the information that's required for a complete application in addition to what the province prescribes, and I think most municipalities would appreciate that opportunity.

The Chair: Further comment? Seeing none, I'll put the question. All those in favour of the amendment? Those opposed? I deem the amendment to fail.

Mr Hardeman: I move that subsection 22(6) of the Planning Act, as set out in section 13 of the bill, be amended by striking out the portion that precedes clause (a) and substituting the following:

"Refusal and timing

"(6) Until a council or planning board has received the prescribed information and material required under subsection (4) and any fee under section 69,"

This is a consequential amendment as a result of the amendment to subsection 22(4), as discussed previously. That amendment clarifies the proponent needs only to submit the information and material prescribed by provincial regulation to trigger the time period for the right of appeal to begin.

Mr Bisson: It's only the prescribed information that's being requested, just be more specific.

Mr Hardeman: Yes, it is.

Mr Bradley: Even though, as the parliamentary assistant points out, this is contrary, or it could be considered to be contrary, to the motion I presented, because it has some merits to it, I'll be supporting it. This is very technical when you get into this. It's not as attractive as

the motion that the official opposition suggested, but there is sufficient merit in it that we will support it.

The Chair: Further comment? All those in favour of the amendment? Contrary? I deem the amendment passed.

Mr Bisson: I move that subsection 22(7) of the Planning Act, as set out in section 13 of the bill, be amended as follows:

"1. By striking out "45 days" in clause (a) and substituting "90 days."

"2. By striking out "45 days" in clause (b) and substituting "90 days."

"3. By striking out "90 days" in clause (c) and substituting "180 days."

"4. By striking out "90 days" in clause (d) and substituting "180 days."

I guess this comes back to the work John Sewell did in regard to the extensive consultation that happened at the time leading up to Bill 163, and I think what expert people, more learned in this field than us, had to recommend is that there needs to be sufficient time for the work to be done. What happens is, our amendment would restore the existing Planning Act time frame, after which an appellant for the OPA can bypass council and go right to the OMB. It says that 45 days is not enough, so we need to go back to the 90, or in the case of a planning board, from 90 to 180. This applies where councils have not moved quickly enough to call the public meeting.

Councils need more time to do the job properly. Piling up applications at the OMB ultimately won't save time, it'll just bump the problem up to the next level of government and really deny local democracy to happen when it comes to the work that needs to be done. It seems to me what we're going to end up with is sort of like an automatic referral to the OMB if we don't have sufficient time for the local councils to deal with the application. It's like we've mentioned on a number of occasions, municipalities, it's no big secret, have—the city of Timmins, for an example, has lost over 40% of its provincial transfers over the next couple of years due to provincial cuts.

In talking to mayor and council and administration of the city of Timmins, they know that in the end it's going to mean they're going to have to reduce staff. If they don't have the amount of staff necessary in the planning department to deal with all the applications, it seems to me they are going to be even more pressed to try to meet the time lines set out under what you're trying to do under Bill 20.

We can all support the idea that you want to be able to streamline and make things faster, but if you don't have the staff to deal with the applications, you're going to get quite the opposite happening here, it seems to me. You're going to have people going automatically to the OMB after 45 days on the basis that the planning department hasn't had the time to do the work, and rather than allowing the local council to do their work and try to make local democracy work, you're going to end up with things just automatically being referred to the OMB.

I'd like to know your view on it. Do you recognize that can happen? It probably will most definitely happen.

Mr Hardeman: We do not believe it will increase the applications going to the OMB. We think the time lines

are appropriate in dealing with the streamlining of the process, recognizing that if we don't streamline the process and get the applications approved, and encourage development and increasing the economy, we will end up with having to lengthen the time frame, if we're using your analysis, because we will keep going where the municipalities will have to keep laying off more and more people because they do not have the ability to increase development and the growth of their community, as is necessary. There is a holdup in that process and we really are convinced that those time lines and the process have to be streamlined to get development on the move again.

Ms Churley: That's BS.

Mr Bisson: Took the words right out of my mouth.

Ms Churley: I guess that's unparliamentary, isn't it? Must I withdraw?

Mr John R. Baird (Nepean): That's that acronym stand for?

Mr Bisson: Bullshit.

Ms Churley: Determine for yourselves. The public participation is not the problem. I keep telling you that. I can assure you this is going to be a problem. I would like to know what you base this figure on. How did the ministry, the minister, the officials, come up with this time frame? Do you have any proof that it's going to work, that the staff are going to be there to do the documentation, the work? What do you base it on?

Mr Hardeman: The time frame is based on looking at the process and trying to find places where the process can be streamlined to increase the ability of the economy to build. I suppose it's fair to say that all numbers are somewhat subjective. Someone has to look at the applications that are presently going through the system and decide where we could reduce the time lines and make the system still as effective as it is today.

I point out that in these time lines the applications are on private official plan amendments. No individual or applicant putting forward a proposal that was being processed but was not quite completed by the deadline would see it to their advantage to appeal to the Ontario Municipal Board and start from square one, so in all probability, if things were progressing but not completed, the applicant would not appeal to the OMB. In applications that are being unduly held up or where an applicant felt there was no ability to see that dealt with in the foreseeable future, it seems appropriate not to wait 90 days as opposed to 45 days. If the application is not proceeding and it is going to end up going to the Ontario Municipal Board, we feel the process and the public would be better served by having that proceed at that time.

Mr Bisson: I'd just come back that if your belief is that you're going to slow down economic development in a community on the basis of moving this from 45 to 120 days, I think you're—

Interruption.

Mr Bisson: I don't know if I'm going to wait for this to stop. I'm used to working in high-noise areas.

Mr Hardeman: It may not be as loud at that end, but I can't hear you at this end.

The Chair: The committee stands recessed for five minutes.

The committee recessed from 0953 to 0954.

The Chair: Let's proceed, shall we? I call the meeting back to order. Mr Bisson, you have the floor.

Mr Bisson: I'm waiting for the parliamentary assistant to get back.

Interruption.

Mr Bisson: I recognize that my good friend from Grey-Owen Sound doesn't find this matter to be very important to the public good, but some of us understand that proper planning is something that's important in this province.

If the parliamentary assistant believes that a clause going from 45 to 120 days or 90 days to 180, depending on the situation, is going to hamper economic development and curtail the municipal tax base, I think you're really mistaken. I make the plea once again that this is an "I told you so" kind of amendment here. What's going to end up happening, and I think you need to realize, is that people will end up bumping things up to the OMB automatically at the 45-day level, rather than trying to work out their differences if they had been given adequate time to do it in the first place. I think you're going to end up with more objections at the OMB by moving in this direction, quite contrary to what you're trying to achieve. We just have that on the record, and I look forward to raising that in the House a couple of years down the road.

Mr Bradley: I would make a similar argument. One of the problems I've found, just from my own personal observation—I don't want to offend anybody personally—that when dealing with the government, the problem is we're dealing with ideology as opposed to practicality. I remember that the Davis administration, when we were sitting in opposition, was very practical on motions of this kind. We're talking about the practicality of this, and your government appears to be ideologically committed to absolutely streamlining, and if anything varies from that, somehow it can't be right.

You have to look in this bill at the practicalities of it in the Planning Act. Although it's unfair to do so, I'd like to hear from the member for Middlesex, who is the only member here, I think, who is a professional planner and who has some expertise and some direct experience, whether he believes—and perhaps he's not in a position to say if it's contrary to government policy; I understand that. But I'd be interested in his observation, if he can make one, as to whether he thinks the time lines the government is suggesting in this legislation can be met by a municipality. You were with London, I believe, Mr Smith. Is it possible to hear from Mr Smith? Perhaps he doesn't want to, and I understand that.

Interruption.

The Chair: It worked last time to call a recess. The committee stands recessed for five minutes.

The committee recessed from 0957 to 1005.

The Chair: I don't think we can wait any longer. I call the meeting back to order. I believe Mr Bradley had posed a question, but as he's not here, I don't know if it's all that apropos.

Mr Bisson: We're still on 22(7), right?

The Chair: Yes.

Mr Bisson: To finish what we were saying before, I think what's going to happen here is that over the longer

term you're going to get quite the opposite effect from what you're looking for in regard to keeping stuff away from the OMB. If the intent of the bill is to allow the local level of government to deal with planning issues, your idea of going down to 45 days will go contrary to that. What's going to end up happening is that, once the time lines expire, people are automatically going to bump it up to the OMB, not giving the municipality the opportunity to deal with the concerns raised. You know as well as I do that the vast majority of things are dealt with locally when given the chance. This is an "I told you so," as we said a little while ago. We'll talk about this in a couple of years.

Mr Lalonde: I am referring to the submission presented by the county of Oxford council on February 27 in London. I feel they have a very competent planner over there, and they stressed that the time frame was really tight in there. I'm going to read what is written on page 4:

"The purpose of the change to the application processing time frames is to streamline the development approval process. These time frames are tight, particularly when the proposals are large, complex or problematic. Successful implementation of these approval time lines will be dependent upon:

"(1) Proponents providing at the time of the application submission all the information required to adequately access the technical merits of the proposal; and

"(2) The establishment of an efficient and timely administrative process for soliciting comments from all the relevant provincial agencies."

It goes on, and then in the last part of the second paragraph, this is the most important part:

"Unless municipalities have the ability to require that sufficient information necessary to adequately process the application is received when the application is submitted, the abovenoted time frames are unrealistic. Without complete application information submitted up front in the process, municipalities could be forced to refuse applications on the basis of lack of technical merit to achieve the proposed time frames."

I think that part is very important. They could send it back and say, "We don't have enough information." This is going to repeat and repeat again, because I think this is the tool for the municipality to get out of that 90 days as spelled out in the bill.

Mr Hardeman: I would just point out that the government agrees with the statement read into the record in that the time frames are important, and all the participating parties will have to work to achieve those time lines.

I also want to point out that the amendment we're presently dealing with, in reducing the 90 to 45, is the need for municipalities to call a public meeting for the public participation in a private OP amendment. This is not to say that the public involvement can only be in 45 days and from then on someone else will be dealing with it. This is the stipulation that municipalities cannot have a private official plan amendment laying on desks in offices that are not being dealt with, that the applicant has an ability to proceed in an orderly fashion. Whether the municipality supports the amendment or whether they

do not, they will be obligated to hold a public meeting and call it on the 45-day process.

The other part of the amendment dealing with the 90 to 180 days again will allow an applicant to appeal an application if it's being unduly held up. We do not see that applicants will be rushing to the Ontario Municipal Board to have decisions made that could've been made at their local municipality 30 days hence. We do not see this as a delay tactic; we see it as a streamlining of the system to get applications moving through the system in a more orderly and timely fashion.

The Chair: Any further comment? Seeing none, I'll put the question.

Mr Bisson: Recorded vote.

Ayes

Bisson, Churley, Lalonde.

Nays

Baird, Carr, Galt, Hardeman, Smith.

The Chair: I deem the motion to have failed.

Any further amendments?

Mr Lalonde: Yes, we have one. I move that clause 22(7)(c) of the Planning Act, as set out in section 13 of the bill, be amended by striking out "90" and substituting "120."

We're coming back to the same reason, just because the time frame is too tight and we say it will be impossible for a municipality to proceed. As I just read a little while ago, a municipality could be forced to refuse the application due to lack of information they would receive at the beginning. This would delay instead of proceeding or meeting the 90-day time frame we have.

Ms Churley: Given that our amendment failed on this, the 180 days, I'd be willing to accept this amendment as a compromise. It does give a little more time, not as much as we had hoped, but hopefully the government will be willing to compromise as well and accept the 120 days, for all the reasons mentioned before.

The Chair: Further comment? Seeing none, I'll put the question.

Ms Churley: Recorded.

Ayes

Bisson, Churley, Lalonde.

Nays

Baird, Carr, Galt, Fisher, Hardeman, Smith.

The Chair: I deem this amendment to fail.

Further amendments?

Mr Hardeman: I move that subsection 22(12) of the Planning Act, as set out in section 13 of the bill, be amended by striking out "are withdrawn or dismissed by the municipal board" in the second and third lines and substituting "are dismissed by the municipal board without holding a hearing or are withdrawn."

This amendment is just to clarify the process to include "without holding a hearing" as to the notification from the Ontario Municipal Board.

Mr Bisson: Is a hearing presently required? It isn't under 163, is it?

Mr Hardeman: For clarification, adding the words "without holding a hearing" returns it to be identical to what is in Bill 163.

Mr Bisson: Exactly. We like that one.

The Chair: Seeing no further comment, I'll put the question. All those in favour of the motion? Contrary? Carried.

Further amendments?

Mr Hardeman: I move that subsection 22(13) of the Planning Act, as set out in section 13 of the bill, be struck out and the following substituted:

"Same

"(13) If all appeals under clause (7)(e) or (f) are dismissed by the municipal board without holding a hearing or are withdrawn, the secretary of the board shall notify the council or the planning board and the decision of the council or the planning board is final on the day that the last outstanding appeal has been withdrawn or dismissed."

This amendment clarifies that this section applies only where the board dismisses an appeal without holding a hearing. Where the Ontario Municipal Board holds a hearing and dismisses an appeal, the OMB's decision is final. The matter does not return to the council or the planning board.

Mr Bisson: Just for clarification, it basically makes it the same as 163. That's what you're doing.

The Chair: Further comment? All those in favour of the amendment? Contrary? The amendment's passed.

I'll put the question regarding section 13. Is it the favour of this committee that section 13, as amended, shall carry? All those in favour? Contrary? I deem that section passed.

Seeing no amendments proposed for sections 14 through 18, I'll ask if there are any comments, questions or suggestions to sections 14 through 18. Seeing none, I'll put the question. All those in favour of sections 14 through 18? Contrary? Those sections have been carried.

Section 19: Are there any comments, question or amendments?

Mr Bisson: I have an amendment to subsection 19(1) of the bill, subsections 31(3.1) and (3.2) of the Planning Act. I move that subsection 19(1) of the bill be struck out.

This brings us back to the debate of yesterday in regard to apartments in houses. We tried to argue, but not very successfully, that basically the government's biting off its nose to spite its face on this one. On the one hand, you want to allow individuals to increase their investment opportunities, both as an investment and also as a home. Bill 120 provided for that. It allowed people in a legal way not to be blocked by their municipal councils from adding an apartment in a house, if need be, either to be able to afford to buy a new home it or so they are able to move someone in there that they're caring for.

I'll just say it all over again. It is really strange that a Conservative government would take away the opportunity of the individual trying to make a buck. Sometimes this is the only way a lot of working people have an opportunity to make an investment that when they retire, they'll have a few bucks in the bank. I think we can all look at our communities and see how many people we

know who retired at age 55, 60, 65 who are able to do so because they have income from an asset such as an apartment building, at first the house they owned that they put an apartment into and eventually rented out and built up some equity, \$120,000, \$150,000, and put that money towards their retirement. I just can't see why the Tories would not want to go forward with that.

The whole housing strategy the government is putting forward, not only in what you're doing under Bill 120 and what you're doing in the Planning Act by not being consistent with provincial policies that say subdivisions have to have 30% of homes that can be bought by people with 60% of the lowest incomes, but also what you're doing with rent control, what you're doing with the housing protection act, what you're doing with the non-profits—it's all towards a system where if you've got the bucks you'll do fine, and if you haven't got the bucks, you ain't going to do nothing at all. I just find it distasteful for a government to do such things.

Ms Churley: The more I look at this bill and talk to people and consider this particular section—everything to do with secondary apartments, basement apartments—what really strikes me about this section is that it's designed, and it's very unfortunate, to have a disproportionate effect on the poor people in our province, the disadvantaged.

There is a litany of policies and cutbacks that have already been made by this government in the name of a 30% tax cut that will mainly benefit the well-off. They are disproportionately affecting the poor and the disadvantaged, and this is another example. I wish the government members would take a look at the reality of those cuts, their effect on poor people in our province. It really is having a disproportionate effect.

1020

I believe this is going to harm people more at this time in Ontario. More and more people are starting to become aware of that, and I think this will add to that. I think this is going to hurt the government in the long run—not that I object to that, of course; that's part of my goal here. I do object and I do regret, though, that in the process, while the government starts falling in the polls when people see more and more how people are being hurt, the problem is that people really are being hurt. We must not forget, when we sit around these rooms making policy, that there are real people being affected.

This is one of those that is going to add to the disproportionate effect. The price and the sacrifice that poor and disadvantaged people, people who through no fault of their own are out of a job or will be out of a job soon because of the many thousands that this government is going to lay off—I do not see any jobs being created by this government whatsoever while it's in the process of laying people off. At a time when there are going to be more disadvantaged people in our society in Ontario being affected by this government, and while the rich get richer, there is going to be less affordable housing for poor people. I really regret that. It's quite disgusting. That's my view of it. These particular sections that disproportionately hurt the poor—it disgusts me and upsets me, and I think overall it's going to upset the people of Ontario.

Mr Bisson: I just want a last attempt to appeal to government members. I have to ask you, who you are speaking for by opposing Bill 120? You're really speaking for those people who are most well-off in our society. For a lot of people in our communities—John, you know this as well as I do—the only way they can enter into the market is to buy a house and put an apartment in it. Sometimes it's the only way they can get in the market.

It seems to me that as legislators, never mind our political stripes, we have to figure out ways we make an economy that everybody can share in. I think that's the goal of the government—it's certainly the goal of the Conservative Party—and I would say that's the goal of both opposition parties. We want an economy where everybody can participate, and part of the problem here is that you're going to have a lot of people who won't be able to enter the housing market in communities like Ottawa or Timmins by virtue of not being able to afford a mortgage. The only way they can do it is by having an apartment in their house.

You know in Ottawa, as well as I do, if you go to Gloucester or other communities around the Ottawa region, their councils are dead set against people putting apartments in those subdivisions for all the reasons we talked about yesterday. I don't think it's such a widespread problem that the concerns of councils are valid. I think the only way you can do this is to allow the bill to stand forward so councils can't block that. I take it the member wants to say something. I'll just stop at that point.

Mr Baird: This issue is an issue of concern to many of my constituents. I'll tell you, just from the addresses and the neighbourhoods I get them from, they're not from the most wealthy people in my constituency, as you suggested at the beginning of your statement. It is very much an issue to do with zoning and what the local municipality is best able to determine in the interests of the community. These councils aren't some sort of independent body; they are elected by the folks in that community and I think are best able to represent issues of this concern. I would agree with Mr Bradley's comments yesterday with respect to zoning and intensification and the changing aspects of neighbourhoods, that people buy into particular bylaws when they are making what will be, for them, their biggest investment: the purchase of their home.

Mr Bisson: Councils, you know as well as I do, are very influenced by the people most well-off in our communities. The councils I've dealt with over the years tend to succumb a lot easier to the interests of those people who have the influence in the community from an economic standpoint than to the people at the bottom end of the economy. I just think that's false.

I guess what bothers me is the trend of our economy over the last number of years. In fairness to the Conservative reform party here, I wouldn't say this is all your doing. I would say this is something that probably started in the later 1970s, where we started moving from an economy where people were able to participate. Through the 1940s, 1950s and 1960s, if an individual wanted to go into a business and start up a business of some type in order to support himself or herself or the family, it was

very easy to do so. The banking policies allowed it, I think the economy allowed it a lot easier in regard to consumers, and what we've seen is multinationals and larger companies over the years really grabbing a larger share of the market, to the point that it's very difficult for the small entrepreneur to get involved in our economy. I think that's a detriment to the economy.

I think an economy only works well when people have access to it, when the average Joe who's working on the plant floor says: "I have an idea. I want to invest the money that I've got and move forward to be able to make a contribution to the economy." That's when the economy works best. I think we're going into an economy where the larger corporations are the ones that control the larger part of the market and it's much more difficult for the average Joe to get in.

So I say this is a small opportunity that we have, at least in the housing market, to allow the individual with not as much money as others to be able to get the share of the economy. Again, I find it surprising that the Tory members wouldn't support this.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment fails.

All those in favour of section 19 passing? Opposed? I deem section 19 to pass.

Section 20, are there any amendments, comments or suggestions?

Mr Bradley: This is an amendment that the Liberal Party is proposing. I believe it's the first one in order. It reads as follows:

I move that section 20 of the bill be amended by adding the following subsection:

"(4.1) Section 34 of the act, as amended by the Statutes of Ontario, 1993, chapter 26, section 53 and 1994, chapter 23, section 21, is further amended by adding the following subsections:

"Other exceptions

"(9.1) A building shall be deemed to comply with a bylaw passed under this section in all the following circumstances:

"1. The building is used as a residence.

"2. The building was constructed at least 20 years before the bylaw was passed.

"Same

"(9.2) A structure shall be deemed to comply with a bylaw passed under this section in all the following circumstances:

"1. The structure forms part of a building that is used as a residence.

"2. The structure was constructed at least 20 years before the bylaw was passed."

The amendment deals with non-conforming sites. We've had to deal with those as municipal councillors on a number of occasions. It proposes that residential buildings over a specified age, say 20 years, should be deemed to comply with zoning bylaws—for example, a house built in the 1950s that sits back from the street 45 feet instead of the 50 required by present bylaws—in order to significantly reduce the existing workloads of committees of adjustment related to the conformity of older buildings with setback and similar provisions of zoning bylaws.

This would permit alterations and adjustments to receive building permits without having to obtain committee of adjustment approval for historical variations from the zoning bylaw. Again, this would remove an obstacle to affordable renovations and unburden municipalities of a costly and redundant review process.

So the example is you have the old house from many years back and somebody didn't see it and it was built with the 45-foot setback instead of the required 50-foot setback. If you wanted to do anything to that in terms of renovation, under the present legislation you would have to fix up the old non-conforming use, that is, that you're at 45 feet instead of 50 feet. This is saying you don't have to go through that process any more to deal with that portion which is in non-conformity.

1030

I don't know whether the ministry has had a chance to look at that and see if it makes any sense to them, but that is what we're proposing.

Mr Bisson: I just have a point of clarification. For example, let's say that this was to pass and I was to have an apartment in a house that doesn't meet certain safety standards. Does that mean to say that those safety standards that are not met are now deemed to be in compliance with the existing bylaws?

Mr Bradley: It deals essentially with the committee of adjustment problems, where the house—as I say, the example is the house is 45 feet from the street instead of 50 feet from the street, as it should have been. It simply solves that problem so that yes, you have to meet any of the building standards that people have, but you don't have to go through the process of getting the approval now for the 45 feet instead of 50 feet.

Mr Bisson: So the example would be that I had a house and 20 years ago I put an addition on it, and the addition makes the building out of compliance with the regs. That's the kind of stuff you're talking about; you're talking about additions, garages, that kind of stuff that should have got a minor variance.

Mr Bradley: Mostly buildings that were built out of compliance in the first place. I don't know how the ministry feels about that. They may want to look at it. They may feel it's not practical. Is there any response to it?

Mr Hardeman: The government does not support the amendment. The municipalities have the authority to do what the amendment suggests by bylaw at the present time. The interior uses of those buildings are covered by the non-conforming standards within the present bylaws, so the amendment deals with the outer perimeters of that structure and we feel that it's appropriate that the municipality—it would be a local zoning-type situation.

We feel that should be in the local autonomy, should be a decision made by the local municipality, whether they feel it appropriate to give a blanket approval to eliminate the need for a committee of adjustment or to proceed with the committee of adjustment process. We don't believe that should be a provincial statute, imposing that upon the municipalities.

Mr Bradley: So you see it that they could do it as a blanket approval right across the city if they wanted, in

all these circumstances, simply deem that across the city, at the local municipality.

Mr Hardeman: Yes.

Mr Lalonde: The municipality definitely could have it in their official plan, this clause, but very few have it. With this amendment here, it would protect those that are in place and in those municipalities that don't have this section in their official plans.

In the past, at the municipal level, we have experienced some problems concerning this. It delays some sales closures because the municipality didn't have that incorporated in its official plan and they have to proceed with a minor variance or also proceed with a zoning change. So this law really would eliminate all the questions that would be brought to the municipal council if it's not indicated in their official plan.

The Chair: Further comment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? I deem the amendment to fail.

Further amendments?

Mr Bradley: I have another amendment—I thought there was a government amendment in here. Did the government one come before mine, or not?

The Chair: No, yours comes first, Mr Bradley.

Mr Bradley: I move that subsections 34(10.1) and (10.2) of the Planning Act, as set out in subsection 20(5) of the bill, be struck out and the following substituted:

"Required information

"(10.1) A council may require a person or public body that applies for amendment to a bylaw passed under this section or a predecessor of this section to provide such information and material as the council considers necessary to determine the matter."

That's fairly straightforward, I believe, and I'll leave that with you.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? I'm assuming you two voted in favour of it. I deem the amendment to fail.

Mr Hardeman: I move that subsection 34(10.1) of the Planning Act, as set out in subsection 20(5) of the bill, be struck out and the following substituted:

"Prescribed information

"(10.1) A person or public body that applies for an amendment to a bylaw passed under this section or a predecessor of this section shall provide the prescribed information and material to the council."

Mr Bisson: That's subsection 20(5)?

The Chair: Subsection 20(5).

Mr Bradley: This is similar to the earlier amendment that you had, that provincially required background must be provided even if there is no local bylaw.

Mr Hardeman: The amendment is identical to deal with the same prescribed information as we dealt with previously for an official plan amendment. We are now dealing with it in the zoning bylaw.

The Chair: Any further discussion? All those in favour of the amendment? Contrary? The amendment's passed.

Mr Hardeman: I move that subsection 34(10.3) of the Planning Act, as set out in subsection 20(5) of the bill, be

amended by striking out the portion that precedes clause (a) and substituting the following:

"Refusal and timing

"(10.3) Until the council has received the prescribed information and material required under subsection (10.1) and any fee under section 69,"

This amendment again is to deal with the delivering of the prescribed information and paying the prescribed fees before the time starts to tick as we approach the time frame for the appeal process.

The Chair: Further comment? All those in favour of the amendment? Contrary? I deem that amendment to pass.

Further amendments?

Mr Bisson: This is on subsection 20(11) of the bill, clause 34(25)(a) of the Planning Act. I move that subsection 20(11) of the bill be struck out.

I guess it's fairly simple as far as explanation. What you end up with here is that really you can end up with amendments to the official plan, a developer wanting to go in and do a development in an area where the services haven't yet been put in place and really forcing the municipality to bear the cost of doing such where, quite frankly, they haven't planned to do it at that time.

I recognize that it's a council decision. The council may decide that they want to do that, but the problem is, again it comes back to what we argued a little earlier, that some of the aldermen and some of the councillors tend to be somewhat unable to sometimes say no to a particular developer, and we just think that's not in the light of good planning.

Mr Bradley: The Liberal Party had exactly the same amendment and we believe that there is a compelling case for this amendment being proposed. This motion would re-establish the prematurity tests, the power of the OMB to discuss matters regarding the basis of the prematurity because the necessary public water, sewer, road services in the proposed development are not available or will not be available within a reasonable time.

Municipalities should not have to bear the costs of an OMB hearing where there's clear information that there's no servicing capacity, or in anticipation of when future capacity will be available. Approval without the assurance of servicing gives the developer and prospective purchaser false expectations and it can put pressure on municipalities to finance new development without the benefit of good, comprehensive planning.

1040

This motion, as a matter of fact, is in line with the stated mission of the government to give municipalities more local autonomy. I think it's a reasonable motion. I would have thought that some of the people with municipal experience would have been in favour of this.

Again, I think one of the detriments we have in this committee is—and I know you're going to think I'm trying to be mischievous, but the member for Middlesex is far more expert on some of these issues than I can ever be, planning issues—one of the problems with our system of government when it's so partisan—that is, parties seem to line up—is that it prevents a person who's got some expertise from expressing views which I think would be

very helpful to the committee. Sometimes I say things to be mischievous, it is alleged, and this time I'm not. I'm really looking to see. If he said that in many of the cases the government was right, I might say, "Well, okay, I'll go along with that."

I'm just wondering if Mr Smith has been muzzled by somebody over there and I really look at that. Here we have members elected to the Legislature, some from various backgrounds who have some expertise. Heaven knows, if I wanted to know anything about severances, I would ask the member for Grey-Owen Sound. He could tell me all about them. If I wanted to know anything about hockey, I could ask the member for Oakville South.

Mr Baird: Or the escarpment.

Mr Bradley: Or the escarpment. I mean, there are all kinds of things. But when we have people who have some expertise in this area, I wish the government would unleash them. Even if they'd have to vote with the government, it would be helpful to me as a committee member to get through this muddle. So I just leave that on the record.

Mr Bisson: I'm surprised that the member for Middlesex doesn't respond. If people are cynical with politicians and are cynical with the political process, I think it's because of part of what we're seeing right now. Supposedly they're elected as the elected member in their local riding to go to Queen's Park in order to represent them and to bring, first of all, the view of the constituents, but also it's incumbent upon the member to bring forward his or her experience that he or she can bring to a debate. I just would repeat the same comments Mr Bradley makes. I really would like to know what Mr Smith thinks about this and other sections of the bill. Have you been muzzled? I take it the answer is yes.

The Chair: Further comments?

Mr Bisson: If we're not going to get the expert opinion of Mr Smith, I'll give you one example. In the city of Timmins there was an amendment to the official plan to allow a subdivision to go forward somewhere that was premature. What you end up with at times is that—in this particular case the subdivision went forward and was allowed. I don't exactly know how that happened, but it was allowed. What they did was that they allowed the subdivision to go forward with its own internal sewer system. Basically, every lot had a septic bed on these particular lots. They weren't the 50-by-100s. These were half-acre lots that were being put in place, maybe a little bit smaller than that. The water was brought in at a cost to the developer.

I remember at the time of the debate the proponents, people who supported the developer, said, "We're not going to go to the city in order to ask them for the sewers some time after the project is finished." So the developer paid for the water to come in from the city and then paid to develop all of the sewer systems on all of these lots. Lo and behold, two or three years after this thing is built and you've now got, I think, about 20 or 30 homes that are built in that particular subdivision, guess who they came to in order to get money to pay for their sewers? They came to the province. One of the people in 1991 came to me and said: "This thing should have never been allowed to go forward on the basis of water and

sewers not being completely installed on the city system. The developer was allowed to put the water forward. We were told that the septic bed that was being installed in our lots was going to be adequate and, as it turned out, it wasn't." It was actually quite a problem.

So the municipality—it was a quite a controversy—had to stir for two or three years figuring out how they were going to pay out of their own pockets as the municipality for the installation of sewer lines about half a mile to the nearest hookup on to that particular sewer system. First of all, we, the province, weren't about to pay because we had said no to that application. Then the municipality was faced with the second problem: The sewer system at that particular end of the community wasn't big enough to be able to take the development that had happened and what future development might happen in that particular subdivision. So I think the interests of the municipality and residents weren't well taken by allowing that particular subdivision to go forward. I think there are a lot of examples of that.

Ms Churley: If I could ask the parliamentary assistant, in Bill 163, if I recall it correctly—

The Chair: You have to speak up.

Ms Churley: Thank you for telling me I have to speak up, but I don't know how many people are listening here.

Mr Bradley: I'm listening.

Ms Churley: Thank you, Jim.

Mr Hardeman: We're all listening.

Ms Churley: Oh, thank you. Look, they're all perking up over there now. Listen.

Mr Hardeman: We always listen to you.

Ms Churley: Bill 163 gave the municipalities the power to turn down applications if they so chose, if those infrastructure aspects weren't there. Why would you not just allow them to make that decision? I don't quite understand why. If, for instance, a municipality has had problems with that in the past, why would you not let municipalities make that decision?

Mr Hardeman: Bill 20 does not attempt to take away any authority that municipalities have had in Bill 163 as it relates to denying an application based on its prematurity because sewer and water service is not available. It also does not take away the ability of the Ontario Municipal Board to turn down that application through the hearing process because of the lack of water and sewer facilities.

Bill 20 puts in place the inability of the Municipal Board to refuse to hear an appeal to a zoning or an application based strictly on the fact that it is premature. The government feels it appropriate that an applicant should have the ability to go before the board and have their day in court, so to speak, on that issue. The prematurity or the availability of sewer and water is one of the criteria that planning applications are and should be judged on. We do not believe that it should be the reason that an application was not heard. We believe it should be part of that hearing process.

Ms Churley: I think that's part of the problem with this. It's such an important part of planning today, especially in trying to curb urban sprawl. I recognize this bill has the opposite effect: it promotes urban sprawl. But let's just suggest for a moment that it is the goal of many

people in Ontario to curb urban sprawl. In my view, taking this out will mean that the opportunity for urban sprawl has been opened up even more. That's the problem with this. It seems to me, as I said yesterday about this, that in fact you're going to have more cases going to the OMB because of this, to resolve the matter one way or the other. It just doesn't make any sense whatsoever. I can't understand why you'd do such a stupid thing.

Mr Bisson: Just to clarify, you're basically doing with Bill 20 what was allowed pre-163, if I'm correct. Right?

Mr Hardeman: The answer would be that pre-163 the OMB could not dismiss based strictly on prematurity.

1050

Mr Bisson: That's why I'm saying what you're doing is Bill 20 is returning us on this issue to what it was basically pre-163. The answer is yes. What I'm trying to say to you is that the whole intent of this bill is in order to streamline planning and, at the same time, try to prevent appeals to the OMB that don't need to be there. It seems to me that the government, in its own deliberations through this bill, has agreed that even with 163, and pre-163, there was a problem there, that you had appeals going before 163 that didn't need to be there, that were taking up time with the board. It really meant also that at the same time there were applications that were being made that shouldn't have been made in the first place, that at the local level they should have said, "This can't even be allowed." So you're going to end up here with developers taking a decision of a local municipality not to allow a development to go forward, and automatically you're going to have more cases at the OMB with this.

I have to repeat what my friend from Riverdale, or Riverside—

Ms Churley: Riverdale.

Mr Bisson: Excuse me. I used to live in your riding; I should know.

She said really it doesn't make a whole bunch of sense. Let me ask you this question: What you're specifically trying to do in this bill in regard to the OMB is to reduce the number of appeals going to the OMB, right? This is what you're trying to do here, right?

Mr Hardeman: The removal of the prematurity in Bill 20 is to deal with the issue that prematurity should be decided in the hearing process, not prejudice the whole case based on one criterion that was used in denying the application.

Mr Bisson: That's the other part of the debate. The question I'm asking is simply this: Is it not the intent of the government, through Bill 20, to make sure that we have a minimum number of appeals before the OMB? Isn't that what you're trying to do?

Ms Churley: Streamline.

Mr Bisson: You're trying to streamline and at the same time make sure you don't have, as you put it, frivolous and vexatious applications before the OMB. Isn't that what you're trying to do?

Mr Hardeman: The intent of Bill 20 is to streamline the planning process.

Mr Bisson: And to not have as many appeals to the OMB, right?

Mr Hardeman: One other intent of Bill 20 is to ensure that everyone is being treated fairly and has a right to the system, the same as all other sectors.

Mr Bisson: To make sure the developers are treated fairly I think is what you're trying to say, but you don't want to say it, because if you answer yes to this question, you're going to have to vote with my amendment, I would say. What you're doing with this is, you're going contrary to what you're trying to do with the bill.

I come back to the point that Mr Bradley makes, that the idea of the committee of the whole is so that legislators can have a pragmatic view of what we've heard from submissions before the committee so that then we collectively as legislators, be it opposition or government, can make the bill better, can make it stronger, can make it do what the government wants it to do in the first place.

I don't take any particular pleasure out of this, but it's another "I told you so" clause. You're going to end up with more applications before the OMB that don't need to be there. Sewell recognized that through his work, developers recognized it, planners recognized it, that—

Mr Murdoch: Sewell?

Mr Bisson: Where did you dig this member up from? Bill, you are, I'll tell you—

Ms Churley: Do you mean the member for Grey-Owen Sound?

The Chair: Order.

Mr Bisson: To finish what I'm saying, everything pointed to the fact that there was a problem pre-163 on this particular issue. The Sewell report recommended that applications on prematurity be allowed in order to do away with the problems we were having at the OMB. Everybody agreed that had to be done. I can't understand why you're coming back with this.

Mr Bradley: This makes one suspicious—and one shouldn't be suspicious, I suppose—that this is almost as though a consultant for the developers came in and said to you, "Here's what we want," and that's what we see in the bill. With a couple of exceptions, that's what we see in the bill. It's a bill almost written by the developers. Certainly, I can't think that the officials of the Ministry of Housing would have written this particular bill this way unless given instruction by the government, which obviously they have been.

The reason I say that is, look again at the practical effect. By having an additional number of OMB hearings, that means local planners—as Mr Bruce Smith used to be when he was in London as a planner—have to spend even more time then dealing with these matters that go to the OMB, because the municipality has to be represented at the hearing. The developer will be there large as life, even though there isn't the capacity existing, nor is there likely to be the capacity in the foreseeable future, and planners of the local municipality have to go to the hearing. So it's tying up more of their time on something that really has no particular future.

By allowing the OMB to say, "Look, this is premature; we're not going to hear it," you avoid tying up the limited time of the ever-shrinking staff of each municipality. Now, you may say, "Well, that staff won't shrink." The only way it can't shrink is they have to make

sacrifices in other areas, so, "We'll cut the staff at the senior citizens' homes, nursing homes, so we can have more planners to service the developers." The only way they're going to be able to deal with these is if they push more people into the planning department, the engineering department, and take them out of other departments that deal with human beings on a very direct basis with their health and with problems of aging.

Interjections.

Mr Bradley: We're just looking at practicality, people.

Interruption.

Mr Bradley: It stops after a little while, the noise.

The Chair: The Hansard tapes are still recording too. Proceed. Speak loudly into your microphone.

Ms Churley: Okay, I'll yell into the mike. I wanted to add a comment here that some of these issues are, as Mr Bradley was saying, practical planning issues and not partisan. It's just practical in terms of looking at speeding up the process. We have an interest in the opposition as well to speed up the process and cut red tape, and when we point out particular areas like this that we know from our own experience and from our own consultation are actually not going to do that, I don't understand why you don't listen to us and perhaps take it back to the minister responsible and say on a couple—we know you can't run in and out all day long, but every now and then we are actually making some very serious practical points that some of us have had experience in.

We know this. We know this is going to be a problem, and we're being stonewalled. We have the government members sitting over there, some of whom have had experience in this area. It's as though they've been muzzled. I'm starting to feel frustrated, because on some of these issues, I know we're not going to agree. The "have regard for," "be consistent with," basement apartments, we're not going to agree. And part of that is a philosophical, political, partisan difference in views. But in these practical areas, I do not understand why we can't have an intelligent, non-partisan discussion about how to make this bill work.

There is a serious problem with this. We know that. It's not going to work. I would find it quite interesting to have some of the government members who have experience in this area, if they think it is going to work, given their own experience, tell us, given what happened before, how they see it working. Perhaps we can be convinced, but certainly nothing the parliamentary assistant said makes any sense whatsoever. It isn't going to work, and with all due respect, I have not heard an explanation that gives me any comfort whatsoever that this is going to improve the planning process. It is not. And I use the word "stupid" again. This is downright stupid, when you're bringing in a new bill that's supposed to be cutting red tape and cutting down on time, to be bringing in parts of the bill that are actually going to slow it down.

Mr Bisson: Can I ask a question? If I would have brought forward an application, let's say I made application to the city for a development in an area in 1990, under pre-163, and the city said it's premature. I was able to bring them to the OMB, right, as a developer? We talked about that a little while ago.

We had one particular one in a place called Kenogami Sea where there was an application for development for converting what was a trailer park into a different kind of commercial operation. What happened was that the city had said no, it didn't want to allow it to go forward because of the reasons actually spelled out in this particular clause in regard to it wasn't within their official plan to allow that particular development to go forward for a number of reasons, including servicing.

What happened is the developer, because the developer had the bucks, and that's understandable, brought that thing all the way to the OMB. It took like three or four years to get there, because this started about 1989 or 1990 and he finally got there I think in 1994, and finally the thing was turned back. I don't know what he's going to do from there, the point being that the city must have spent on that particular application I would say in the hundreds of thousands of dollars of staff time and legal time to go fight that one before the OMB. I know I was lobbied on both sides of that issue by numerous people in the area, the amount of time myself and my staff spent on that particular issue, not to count what happened in the community itself, for an application that wasn't supported by the official plan in the first place.

It seems to me it would have made more sense to just say at the very outset: "It is not allowed. It is not something that falls within the official plan of the city of Timmins, and let's not waste each other's time here." We ended up there with an application before the OMB that didn't have a chance of being approved. It comes back to what we were arguing with you a little while ago. Why allow that practice to happen?

1100

Just on the point that both Mr Bradley and Mrs Churley raised—

Ms Churley: Ms.

Mr Bisson: Ms Churley—in regard to the issue about the role of the opposition and government members in committee of the whole, I spent, in 1994, a lot of time with Conservative members, the now Minister of Northern Development and Mines, on the sustainable forestry development act, and I can tell you that when the Tories came forward with amendments to our legislation that were practical in nature—not on philosophical, because I agree with the member for Riverdale; on philosophical things we're not going to agree—when the Honourable Mr Hodgson brought forward suggestions to make the legislation work, because what we intended to do and what we told the drafters of the bill to do didn't quite work out in practicality, I can tell you, as a government member, I was out talking to the ministry staff and saying: "Is what this guy saying real? Is he right?" They would say, "Well, yeah, he is right," and I'd say, "Fine, we're going to change it." "Well, you can't do that." "Never mind, we are going to change it." We'd talk to the Minister of Natural Resources, the Honourable Howard Hampton at the time, and we would get the darned thing changed. Because why would we want to allow, as government members, the minister's bill standing in the name of the government to have flaws in it? Then we end up with a bill that doesn't do what we want it to do in the first place, and I would think it would be to the

interests of the government members to make sure that they do their jobs in making sure that when Bill 20 comes out, it does what they want it to do.

I'm telling you on this particular clause, this is going quite in the opposite direction. So what's the role of the government members on this committee? Are they here just to vote and support the bureaucrats and the minister? Is that what the role is here?

The Chair: Further comment? Seeing no comment, I'll put the question. All those in favour of the amendment? Contrary? The amendment fails.

You can disregard the next amendment because it was identical. I'll put the question regarding section 20. Section 20, as amended, carries? Contrary? Section 20 carries.

Section 21.

Mr Bisson: I move that section 21 of the bill be struck out. This is the apartments in houses issue. Obviously—

The Chair: Excuse me, Mr Bisson, but that motion is out of order. You can't move to delete an entire section. The proper course of action is to simply vote against the section.

Mr Bisson: Thank you very much. We will do that.

The Chair: All those in favour of section 21 carrying? Contrary? Section 21 carries.

Seeing no amendments proposed for sections 22 and 23, are there any comments, questions or suggestions for sections 22 and 23?

Mr Bisson: I do with regard to sections 22 and 23. I ask the question again, what is the role of the government members on this committee? Is it strictly to support the wishes of the minister and the chosen few and the political staff in the Premier's office, or are they here to do their jobs and to make legislation better for the people of Ontario? I want to know.

Ms Churley: No, for the developers. They're here for the developers.

Mr Murdoch: You want to know.

Mr Bisson: Because if this is the case, I don't know why we're even bothering going through the farce of going through the rest of these amendments. We may as well just say to hell with it, quite frankly. We all have better things to do here.

Ms Churley: Bill Murdoch thinks that's a good idea, actually.

Mr Bisson: I would have a suggestion. You should take Murdoch and not put him on committees, because quite frankly he's not playing even in the minimal role that the other members are doing trying to be quiet.

Mr Gary Carr (Oakville South): He knows more about planning than you will ever know.

Mr Hardeman: Mr Chairman, point of order.

Ms Churley: He certainly does know what a severance is.

Interjections.

Mr Carr: —and you're criticizing other people. Don't start the bullshit, Bisson.

The Chair: Mr Hardeman has the floor. Order.

Mr Hardeman: Mr Chairman, on a point of order: I do believe that the purpose of this committee is to discuss and to debate Bill 20 and not for either party or either side of the room to debate the responsibility of other members on the committee.

Mr Carr: I hear you yapping. Don't you criticize people who know more than you do, Gilles. Get up and leave and go back to Cochrane.

Interjections.

The Chair: Order.

Mr Hardeman: On the point of order, Mr Chairman: If a certain member of the committee does not feel that they are spending their time wisely, it is their choice that they are here. All members of the committee are here for their purposes, and if they do not feel that their time is appropriately spent, they can make those decisions on their own. I believe we should be debating Bill 20, not the merits of what other members of the committee are here for.

Mr Bisson: I would say on Bill 20 the point of committee of the whole is in order to take a look at the sections of the bill in order to make sure that the bill does what the government intends it to do. I just ask, what's the role of the government members? I've never seen government members on a committee be so quiet as what we're finding here in regard to their views on particular sections.

The Chair: I would ask all members to direct their comments to the sections of the bill under discussion, and, Mr Carr, I would ask you to withdraw your one unparliamentary phrase.

Mr Carr: I will not withdraw it.

Ms Churley: Say BS then.

Mr Carr: I believe in everything. You cannot criticize that member, Gilles. You can disagree, but do not criticize a man who knows more about it and has given more to the planning of this. You might disagree, but that man knows more about planning than you will ever know.

Mr Bisson: Mr Chair, just on a point of order.

The Chair: No, no. Mr Bradley's next.

Mr Bisson: On a point of privilege: I certainly don't want to offend Mr Murdoch—

Mr Carr: Well, you did.

Ms Churley: Let him speak for himself.

Mr Bisson: Listen, I certainly don't want to offend Mr Murdoch, but understand what we're trying to say here. I'm not going to go into the whole debate again. We would just like government members to participate in the process.

But I do believe there was an unparliamentary comment that was made by Mr Carr and I would ask that it be withdrawn.

Mr Baird: Did the honourable member not make the same comment yesterday in telling us what the acronym that the member for Riverdale used was?

Mr Bisson: Check Hansard. It wasn't raised at the time, and check Hansard. If it was, I will withdraw it. I have no problem with saying that. I ask the member from Oakville to do the same.

The Chair: Mr Carr, would you please consider withdrawing that one word.

Mr Carr: In the interest of peace I will—well, first of all, before I go through it, just refrain from criticizing individuals. To keep the peace, I will withdraw.

The Chair: Thank you, Mr Carr. Are there any further comments regarding sections 22 or 23? Seeing none, I'll

put the question. Is it the favour of this committee sections 22 and 23 carry? All in favour? Contrary? Sections 22 and 23 carry.

Section 24.

Mr Bradley: I have an amendment to section 24. Again, I believe this amendment to section 24 is most helpful, and I'll explain in a moment, after I read the amendment.

I move that section 24 of the bill be amended by adding the following subsection:

"(4) Subsection 41(10) of the act is repealed and the following substituted:

"Notice and enforcement of agreements

"(10) The applicable municipality may enforce an agreement entered into under clause (7)(c) or (8)(b) against the owner and, subject to the Registry Act and the Land Titles Act, each subsequent owner of the land,

"(a) if the agreement is registered against the land to which it applies; or

"(b) if the agreement is recorded by the municipality in the same place that it records information about the zoning status of properties.

"Notice and enforcement of approvals and conditions

"(10.1) The applicable municipality may enforce the terms of an approval under subsection (4) and the conditions imposed under subsection (7) against the owner and, subject to the Registry Act and the Land Titles Act, each subsequent owner of the land,

"(a) if the terms and conditions are registered against the land to which they apply; or

"(b) if the terms and conditions are recorded by the municipality in the same place that it records information about the zoning status of properties."

Let me briefly explain why I want to see this motion carry. The issue is this: how to make binding site plan approval not only the developer who seeks the site plan approval in the first place, but also all subsequent owners and mortgagees.

Municipalities should be given two options re site plan approval enforcement: registering against the land to which it applies, that is, registering the agreement on title; or recording the approval and conditions with the zoning status of properties by the municipality. This is a simpler, less costly, less time-consuming alternative to the present system of preparation and registration of agreements regarding site plan approval.

This is a problem, I know, and some municipalities have expressed this concern about the ability to enforce these site plan agreements on the people who own the property later on or the mortgagees. Anybody who sat on a municipal council has to go through these problems from time to time; where the original owner may have been in compliance and may have been cooperative with the municipality, subsequent owners and mortgagees are people who have simply not lived up to those obligations.

My amendment I hope is a practical solution to this. I'd be interested in the reaction of the ministry, whether it believes that this would be helpful to the municipalities or whether it believes it would not be helpful.

1110

Mr Hardeman: The government will not be supporting the motion. Site plan agreements bind subsequent

owners of land and consequently affect interest on the land. Given this effect, agreement should be registered on title to the land to give affected individuals fair notice. Land owners should not be obligated to conduct a zoning bylaw search to determine if there are any outstanding obligations relating to the land. Cost and time efficiency may not be available for subsequent land owners or other individuals who simply wish to determine if there are any outstanding obligations relating to the land.

A search can be done in the registry office on the same day for \$5. If a copy of the agreement is required, it costs 50 cents per page. Currently, a search with the city costs \$60, requires a written request and takes two to three days for a response. If the Planning Act is amended to allow municipalities to have an alternate method of keeping records of these agreements, municipalities could charge any amount they see fit to individuals requesting this information, and there is no obligation to make the agreement available on the same day as requested.

An amendment may eliminate the opportunity for subsequent owners to have notice of site plan agreements affecting their land if they do not know that both a title search and a search of the municipality's zoning records could be required. Currently, agreements and other instruments affecting the land are registered on title. By recording site plan agreements in an existing zoning recording system, the city is treating them as if they were like zoning bylaws. These agreements, however, are quite different from the zoning bylaws as they impose conditions on land owners which a zoning bylaw cannot do. A more likely comparison is a subdivision agreement which must be registered on title in order to bind subsequent owners.

An amendment could introduce an inconsistent system varying from municipality to municipality across the province. Some site plan agreements would be registered on title and others would require a zoning bylaw search. The government does not deem it appropriate for individuals to not know which system was in place across the province.

Ms Churley: I must admit that I haven't paid a whole lot of attention to this section in the bill. It seems a bit technical, although I'm concerned that it may have wider implications than I'm aware of here. It seems to me to be a minor change, but you seem to make it more major than I thought it was. It's my understanding that this amendment requires agreements with a developer to provide amenities to be recorded by a municipality in a publicly accessible place. Is that the difference? I don't know which one of you can answer that.

Mr Bradley: Mr Murdoch might be able to.

Ms Churley: He's the expert. Mr Murdoch has, according to Mr Carr, this great wealth of knowledge on the Planning Act. I wonder if he could, because of his knowledge, explain the difference, because it is quite technical. I would ask the Chair if—

Mr Murdoch: You go ahead, Ernie. You're the parliamentary assistant.

Mr Hardeman: The concern of the government, first of all, is the inconsistency. The system is available in Toronto today. It is not available in the rest of the province. The majority of the province would still be registering these agreements on title. It would be very difficult

for an individual or anyone wishing to know whether there were impediments to the title of the land if in some areas it's registered with the municipality through their zoning process and in other areas it's in the registry office. So for consistency, we believe we should not pass a law that says that in some areas they can do it in one way and in some areas they can do it in another way.

Ms Churley: This question around consistency, I again find you're not at all being consistent in where you consider you should be consistent and where you don't need to be. It's okay in some municipalities, for instance, to have different laws about basement apartments. That's one example where you don't mind inconsistencies.

I'm not so sure that in this case the inconsistencies would cause any harm, why you couldn't have where possible, where available, a difference. What harm would it cause? Would it delay a process somehow? I don't see the reasoning there. I admit I'm not really knowledgeable about this aspect, but it appears to me on the surface that it wouldn't cause any difficulties.

Mr Hardeman: As it relates to the comparison of apartments in homes and this amendment, the information that would be created by removing the right of accessory apartments will be the type of information that is and always has been available through the zoning process. Everyone involved in that process would know that they would look to the municipality for that information.

A site plan agreement, as we're talking about in this, if an individual from—just to pick a place—southwest Oxford were to come into Toronto and had sufficient financial resources and were to purchase a property, he would in this case look in a different area for the site plan information than he would if he purchased that property in Oxford county.

Having said that, it's quite possible that they would not do that, that they would end up purchasing property and they did not know everything that was on title. In the process of searching title, you would find that information as it's registered in the registry office. In this process, you would not find it. You would have to go to city hall to find that information. You may already own the property when you find that out. So I think to protect the public, it requires a uniform system as to where this information would be available.

Mr Bisson: Just for clarification, presently outside of the city of Toronto the practice is that that information is kept by the municipality?

Mr Hardeman: In all areas, to legalize this type of agreement, it must be registered on title. In the city of Toronto, my understanding is that they have another system that registers it on the property within the municipal structure.

Mr Bisson: So in regard to the site plan, the site plan is on my title of property? I'm asking the question.

Interjection.

Mr Bisson: Then I'm not quite clear what the Liberal amendment is trying to do here. You're trying to set up a dual system?

Mr Hardeman: We did have a presentation to the committee structure from the city of Toronto requesting that this be added to the bill, to deal with how they are presently registering the site plan agreements. It seems to

be working very well. It's the age of technology; it's working well in Toronto.

The question is, under the present statutes of Ontario, whether registering that way would bind subsequent owners of those properties. They requested that it be added into the bill that that was as efficient and as binding, being registered by the city on their zoning process, as others are registering at the registry office. That's where the government has concerns about the consistency. Subsequent owners would not know in all cases where to look for that information. They could be owners of property that had great impediments on it that they were never made aware of in the title search when the transfer of that property was done.

1120

Mr Bradley: I appreciate the clarification from the parliamentary assistant and the members of the Ministry of Housing. Indeed, that's where the motion did come from, a presentation that was made to committee, and I was very interested in how you felt it would impact across the province.

The Chair: Any further discussion? Seeing none, all those in favour of the amendment? Contrary? I deem the amendment to fail.

I'll put the question on 24. Is it the pleasure of the committee that section 24 carries? All those opposed? The section carries.

Section 25. Any comments, questions or amendments?

Mr Hardeman: Mr Chairman, the government will be voting against section 25. This is a consequential amendment, since the minor variance provisions in sections 45 and 45.1 of the Planning Act are being removed. Again, this deals with the appeal to the OMB on minor variances, so we will not be supporting this section.

Mr Bradley: I have a little note written on this that says: "Bill 20 originally added a new provision requiring a majority of the committee of adjustment to make a valid decision. A smaller quorum would not be allowed. This amendment deletes this provision." Is that what this does? Yes? What are the merits of that, then? What are the arguments that are put forward on that?

Mr Hardeman: We'll ask legal branch to tell us.

Ms Elaine Ross: Elaine Ross, Ministry of Municipal Affairs and Housing, legal services branch. The reason that we're now removing these sections is because they're already in pre-Bill 20, section 45. So when we vote down section 26 of the bill, that will make the existing minor variance provisions in the act bounce back, and these sections are already in there, so we won't need them here.

Mr Bradley: On the matter of a quorum, could you explain that? What specifically happens with a quorum now and after we vote on this?

Ms Ross: There's no difference now and afterwards.

Mr Bradley: No difference. Okay.

Mr Bisson: Just so that I understand, taking 25 in basically deals with later sections that deal with section 26, just to make them all concur with each other. That's all we're doing here?

Mr Hardeman: This goes back to the way it was written in Bill 163.

Mr Bisson: Can I just saying something here on this? I would for once congratulate the government in actually

listening to what presenters had to say on this particular issue. I think it's fairly clear that pretty well everybody who came before the committee, by majority—

Ms Churley: Except AMO.

Mr Bisson: Except AMO, I would point out—said that really this idea of taking away the ability to appeal to the OMB minor variances was the wrong thing to do. I congratulate the government for once actually listening to somebody. It's one of the few times I've seen that happen.

Ms Churley: It's true that it was everybody except AMO, which really astounded me because a lot of the representatives from municipalities and developers agreed that this was a problem. Not to take away from my colleague's congratulations, but I expect that in keeping with this government's approach to the new Planning Act, this would change, because even the developers had a problem with it.

Mr Bradley: Well, if they have a problem with it—

Ms Churley: So if they have a problem with it, it gets changed.

The Chair: Are there any further comments? Seeing none, I'll put the question. Is it the pleasure of the committee that section 25 carry? All those in favour? All those opposed? I deem section 25 does not carry. It's defeated.

Section 26.

Mr Bisson: Just to make things go a little bit quicker, we all have the same motion here on section 26 of the bill. Seeing that the government is going to amend this—both the NDP and the Liberals have amendments on section 26 that I take it will basically bring us back into sync with what the government was trying to do in section 25. I would withdraw, if it's in order, the NDP motion, section 26, and just put on Hansard that by doing so we're going to allow the minor variances to go forward. Can we do that?

The Chair: If you don't make the motion, it's deemed to have been withdrawn.

Mr Bisson: I'll let the Liberal Party do its own.

Mr Bradley: Similarly, the Liberal motion is identical to the NDP motion and is in keeping, I think, with what the government wants to do. However, the government motion looks like it's much shorter, if I have the right version. Is there any reason the government motion is much shorter?

Mr Hardeman: It has to do with streamlining the planning process.

Mr Bradley: I'm prepared to move my motion, but if your motion does exactly the same thing—

Mr Hardeman: I think for clarification of the committee, the two motions from the opposition were putting a whole framework in place. The government's motion is to revert back to the Bill 163 wording, so it requires much less wording.

Mr Bisson: Yes, because it's already in the bill.

Mr Bradley: It accomplishes the same thing. If you're going to move it, I guess we will support it, if it accomplishes the same thing and there are no tricks to it.

The Chair: So you're not making a motion either, Mr Bradley?

Ms Churley: Well, I think he'd like an answer on that. Is there any difference?

Mr Bisson: It brings you back to 163.

Mr Hardeman: Take my word for it, there are no tricks.

Ms Churley: There are no tricks.

The Chair: Are there any further amendments?

Mr Bisson: Oh, here come the tricks.

Mr Hardeman: My apologies. It's not a trick, but there is a change from 163 and it deals with the board's ability to make a change to the original application without giving notice that that was done in the board process—if it's a minor change.

Mr Bradley: In that event, I will move my motion then. Does a motion, by procedure, have to be read into the record or may it be deemed to have been read?

The Chair: It has to be read, Mr Bradley.

Mr Bradley: I will read it then. Here it comes, moved by myself, section 26 of the bill, subsections 45(10) and (11) to (11.13) of the Planning Act. That's what we're talking about.

I move that subsections 45(10) and (11) of the Planning Act, as set out in section 26 of the bill, be struck out and the following substituted:

"Decision

"(10) The decision of council on an application shall be in writing and shall set out the reasons for the decision.

"Notice of decision

"(11) The clerk of the municipality shall send out a copy of the decision, certified by him or her, to the following persons not later than 10 days after the decision is made:

"1. The minister, if the minister has notified the council that he or she wishes to receive a copy of all decisions of council under this section.

"2. The applicant.

"3. Each person or public body who has asked in writing to be notified of the decision.

"Appeal to OMB

"(11.1) The applicant, the minister or any other person or public body who has an interest in the matter may appeal the decision of the committee to the municipal board by filing a notice of appeal with the secretary-treasurer of the committee within 20 days after the decision is made and paying the applicable fee under the Ontario Municipal Board Act.

1130

"Notice of appeal

"(11.2) The notice of appeal must set out the objection to the decision and the reasons in support of the objection.

"Same

"(11.3) The secretary-treasurer shall promptly forward the notice of appeal and the fee to the municipal board together with everything filed with the committee of adjustment relating to the matter being appealed and such other things as the board may require.

"No appeal or appeal withdrawn

"(11.4) If no notice of appeal is given within 20 days after the decision is made, or if all appeals to the municipal board are withdrawn, the decision of the committee is final. The secretary-treasurer shall notify the applicant and shall file a certified copy of the decision with the clerk of the municipality.

"Powers of the OMB

"(11.5) The municipal board may make any decision on the appeal that the committee could have made on the original application.

"Same

"(11.6) The board may dismiss an appeal after holding a hearing or without holding one, as the board considers appropriate.

"Representation

"(11.7) Before dismissing an appeal, the municipal board shall give the appellant an opportunity to make representations in respect of the appeal.

"Dismissal without hearing

"(11.8) The municipal board may, on its own motion or on the motion of a party, dismiss all or part of an appeal without holding a hearing,

"(a) if the board is of the opinion that,

"(i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the board could allow all or part of the appeal,

"(ii) the appeal is not made in good faith or is frivolous or vexatious, or

"(iii) the appeal is made only for the purpose of delay;

"(b) if the appellant has not provided written reasons for the appeal;

"(c) if the appellant has not paid the applicable fee under the Ontario Municipal Board Act; or

"(d) the appellant has not responded to a request by the board for further information within the time specified by the board.

"Notice of hearing

"(11.9) The Municipal Board shall give notice of its hearing to the applicant, the appellant, and the secretary-general of the committee—"

The Chair: Excuse me, Mr Bradley, you added a word there.

Mr Bisson: You're paying attention, Steve.

Mr Bradley: Where is this?

The Chair: You added the word "and" after "appellant."

Mr Bradley: Okay, I'll try this again.

"Notice of hearing

"(11.9) The municipal board shall give notice of its hearing to the applicant, the appellant, the secretary-general of the committee—"

The Chair: Excuse me, secretary-treasurer.

Mr Bradley: Secretary-treasurer. What did I say?

The Chair: General.

Ms Churley: General.

Mr Bradley: I must have the United Nations—

The Chair: We have enough on our plate, we don't have to worry about world issues.

Mr Murdoch: There's an appointment coming up.

Mr Bradley: I'm thinking of that appointment—"the secretary-general of the committee"—

The Chair: You did it again.

Mr Bradley:—"the secretary-treasurer of the committee and to such other persons or public bodies and in such manner as the board may determine.

"Amended application

"(11.10) On an appeal, the municipal board may make a decision on an application which has been amended

from the original application if, before issuing its order, written notice is given to those who received notice of the original application for the minor variance.

"Same

"(11.11) A person or public body who receives notice under subsection (11.10) may notify the board of an intention to appear at the hearing, if any, or the resumption of the hearing, as the case may be. Notice under this section must be given not later than 30 days after the person or public body receives the notice under subsection (11.10).

"Same

"(11.12) Subsections (11.5) to (11.8) apply, with necessary modifications, with respect to an application which has been amended from the original application.

"Notice of decision

"(11.13) The secretary-treasurer of the committee shall file a copy of the order of the municipal board with the clerk of the municipality."

That is the motion. The reason is as follows. The reason will be shorter than the motion and will not refer to the secretary-general, I assure you. This amendment restores the right of appeal on minor variances. Minor variances are small zoning changes, often for residential properties, for such things as adding porches, swimming pools and additions to houses. Under the government bill, there would be no appeal mechanism of a council decision.

Minor variance appeals use only a small portion—it's estimated, I think, 6%—of OMB time and there is no compelling reason for the removal from the process. In fact, the elimination of such appeals may result in more rezoning applications to municipalities and ultimately to the OMB, thereby of course increasing cost. This is similar to, but not identical to, I believe, what the government wishes to accomplish.

I think members who had the opportunity I didn't of sitting in on a number of the hearings heard this issue mentioned, and those who've received communications heard this issue mentioned by a number of people who made representations either in writing or orally to the committee.

Mr Hardeman: The government will not be supporting the resolution. One of the concerns we have with the resolution is that it is an addition to the process set out in Bill 20 that deals with how the appeal process would be initiated originally from the committee of adjustment dealing with members of the committee of adjustment going through council and then going through the Ontario Municipal Board.

The intent of that section was to reduce the number of appeals and processes going to the Ontario Municipal Board. We heard a lot of presentations during our public deliberations that there was concern the application should go to the Ontario Municipal Board. The government has listened to that concern. We have decided to go back to the direct appeal to the Ontario Municipal Board.

We're convinced the process that does that in Bill 163 is fairly straightforward, that the committee of adjustment makes its decision and that decision is appealable by anyone wishing to do so, in the act, can be forwarded to

the Ontario Municipal Board. For that reason we do not support this motion, but we'll be putting forward a motion that's subsequent to this to deal with a direct appeal to the Ontario Municipal Board.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment failed.

Mr Hardeman: I move that section 26 of the bill be struck out and the following substituted:

"26(1) Section 45 of the act, as amended by the Statutes of Ontario, 1993, chapter 26, section 56 and 1994, chapter 23, section 26, is further amended by adding the following subsection:

"Exception

"(18.1.1) The municipal board is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor.

(2) Subsection 45(18.4) of the act, as enacted by the Statutes of Ontario, 1993, chapter 26, section 56, is repealed and the following substituted:

"Hearing

"(18.4) If a notice of intent is received, the board may hold a hearing or resume the hearing on the amended application or it may issue its order without holding a hearing or resuming the hearing."

The two motions are the same powers as those given to the Ontario Municipal Board when dealing with appeals on consent applications under section 53 of the act. They will give the OMB some flexibility in dealing with appeals on minor variance applications which have been amended.

1140

Mr Bisson: Just one question: The difference between what you have in 163 and what you intend on doing with this is that there won't be any need for a public meeting.

Mr Hardeman: No, this is an amendment that deals with an application for a minor variance that was appealed to the Ontario Municipal Board, and in the process of that, adjustments were made to the application that changed it, but the OMB could then still decide on that application without further notice.

Mr Bisson: I was reading this. It says, "The municipal board is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application"—okay, got you.

Mr Hardeman: If the request for the minor variance was for a two-foot frontage and the decision was at the one-foot frontage that would be a change, but they would not have to go through the public notice process.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment's passed.

Section 26, as amended. Is it the favour of the committee that section 26, as amended, carry? Contrary? Carried.

Mr Hardeman: I move that subsection 27(1) of the bill be struck out.

This is a consequential amendment since the new minor variance provisions in sections 45 and 45.1 of the Planning Act were voted down and the amendment to subsection 47(2) of the Planning Act is no longer needed.

The Chair: Further discussion?

Mr Bisson: One second here. Okay, thank you.

The Chair: Seeing no further discussion, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Mr Bisson: Subsections 27(2) and (3) of the bill (clauses 47(11)(a) and 47(12.1)(a) of the Planning Act): I move that subsections 27(2) and (3) of the bill be struck out.

Basically, we're back to the same argument in regard to official plan amendments being denied on prematurity. I think we've made all of the arguments we wanted to make on previous motions. Unless the government plans on changing its mind from the previous votes, I think the arguments have been made.

Mr Hardeman: I and the government will not be supporting this motion, for the arguments that the opposition has made on previous—the prematurity test and the ability to have the board hear the application with all the relevant factors remain and that should remain in zoning orders, as it does in the zoning bylaws and the official plan amendments.

The Chair: Further discussion? Seeing none, I'll put the question. All those in favour of the amendment? All those opposed? The amendment fails.

Mr Bisson: On a point of order, Mr Chairman: The government just voted against its own amendment. If you'd note, I read the wrong amendment.

The Chair: No, (2) and (3).

Mr Bisson: No, I recognize that. I wanted to read—but I think, if you check Hansard—

The Chair: No, you didn't.

Mr Bisson: I did not? Thank you.

The Chair: No.

All those in favour that section 27, as amended, carries? Contrary? Section 27, as amended, is carried.

Seeing no amendments proposed to section 28, I'll put the question. All those in favour that section 28 carries? All those opposed? Section 28 carries.

Section 29. I think the first one is a Liberal motion.

Mr Hardeman: Mr Chairman, I request we set down section 29 to a later time. I have some amendments to 29. The committee may wish to defer a decision on that so they have the opportunity to go through the amendments rather than vote on them at the present time.

Mr Bisson: Are you saying that we have new amendments?

Mr Bradley: Yes.

The Chair: If you're going to talk about 29, you should talk about 30 as well, because there are amendments to that section.

Mr Hardeman: I would ask that 30 then also be set down.

The Chair: Is there unanimous debate that we postpone debate on sections 29 and 30 until after lunch? Thank you.

Moving on to section 31, any comments, questions or amendments to that section?

Mr Bradley: The government wants us to vote against its own bill. Is that what it's saying?

Interjection: It's not unheard of, of course.

Mr Hardeman: We don't have an amendment to this section. We are only suggesting the government will be

voting against the section of the bill. Again, it relates to the change in the appeal of the minor variance process. Going back to the full appeal for minor variances will require not having this section in the bill.

The Chair: That having been said, is there any further discussion on section 31?

Interjections.

The Chair: It's not a motion.

Mr Hardeman: Again, to the comments, I do not suggest amendment to section 31, only that the government will be voting against section 31.

The Chair: Is it the favour of this committee that section 31 carries? All those in favour? Contrary? Section 31 is defeated.

Section 32.

Mr Hardeman: Again, I do not have any amendments to section 32, but I will be suggesting that I, as a member of the government side, will be voting against section 32.

Mr Bradley: I have a prediction.

Mr Hardeman: I'm not going to be alone.

The Chair: Is there any further discussion on section 32?

Ms Churley: Why are you recommending that the members of the government—

Mr Hardeman: The amendment is the same as in section 31. It relates to the minor variance provisions, and they are no longer required because of the change to the appeal process.

The Chair: If there is no further discussion, is it the favour of this committee that section 32 carries? All those in favour? All those opposed? Section 32 is defeated.

Seeing no amendments proposed for sections 33 and 34, are there any comments, questions or amendments on sections 33 and 34? Seeing none, I'll put the question. Is it the favour of the committee that sections 33 and 34 carry? All those in favour? Contrary? Sections 33 and 34 carry.

Section 35.

Mr Bradley: The Liberal Party has an amendment to propose to section 35.

The Chair: Excuse me, Mr Bradley. We're dealing with section 35. Yours would be a new section, so we must conclude debate on section 35 before we deal with your motion.

Are there any comments or amendments to section 35 itself?

Mr Bradley: Not now, you're saying?

The Chair: Not now.

Seeing none, is it the favour of this committee that section 35 carries? All those in favour? Opposed? Section 35 carries.

Now, Mr Bradley.

1150

Mr Bradley: Thank you Mr Chairman. I move that the bill be amended by adding the following section:

"35.1 The act is amended by adding the following section:

"Mediation of OMB appeals, etc.

"65.1 (1) The Municipal Board may use mediation to attempt to resolve matters that are referred or appealed to the board, before determining the matter in the manner provided under the act.

"Same

"(2) The municipal board may employ or retain the services of persons to provide mediation services under the act."

The reasoning is as follows: The amendment enables the OMB to use mediation to attempt to resolve disputes appealed to the board. The provincial facilitator's office mediation pilot project successfully mediated approximately 80% of all OMB appeals it dealt with, at a cost of \$800 to \$1,000 per appeal. It's efficient and effective.

I should note that legislative counsel advises that the motion may be ruled out of order because it is not addressed in the bill. I'm just wondering whether you were going to rule it out of order.

The Chair: No, it is in order.

Mr Bradley: Okay. Because I went on to say that it does, however, appear to be within the scope of the long title of the bill, so there was an argument that it could be ruled in order. I'm glad that you've ruled it in order. I'd be very interested in the government's comments on this motion.

The Chair: Mr Bisson.

Mr Bisson: Government comments, I think.

The Chair: Your hand was up first.

Mr Bisson: I'd be prepared to hear what the parliamentary assistant says, because he might agree with it and I won't have to comment.

Mr Hardeman: I'm glad to hear that everyone is interested in what the government has to say. The government does not support the motion. The current provisions in section 65 of the act already provide the OMB and its agents with the ability to use mediation, conciliation or other disputes resolution techniques to resolve concerns and disputes, and we do not deem it appropriate to give any further direction in this act as to how they shall deal with the applications.

Mr Bisson: Let me ask a question then to the parliamentary assistant: If this particular motion was supported and put into the bill, would it allow for more opportunity for mediation than presently exists or would it not change it at all?

Mr Hardeman: We do not believe that it would change. We think everything that is being proposed in this resolution would be available presently under the OMB system if the OMB so decided to use that discretion.

Mr Bisson: So in your opinion it would not allow more mediation than presently exists under the act?

Mr Hardeman: No. I think the mediation that presently is available is as extensive as what this would allow, or this would provide for.

Mr Bisson: I would just ask for the logic then from the Liberal party, what it is that they intended to do in addition?

Mr Bradley: We think it makes it more specific that the OMB would use mediation. We think it is just more prescriptive than it exists at the present time. It's not a major problem. But I know that in opposition you wouldn't mind supporting it.

Mr Bisson: I just wanted to find out.

Mr Bradley: The member for Middlesex agrees with me; I saw him nodding. Maybe he was nodding off.

Mr Bisson: I asked the question in order to make sure that I'm clear about what I'm voting on, what this motion intends to do. I believe that mediation is a much better way to go, and if this motion allows for more mediation and a clearer way to give direction to the board to go to mediation, I think we should support it. On principle, I will support it.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment fails.

Seeing no amendments proposed for sections 36 through 44, I'll ask if there are any comments, questions or amendments to sections 36 through 44? Seeing none, is it the favour of this committee that section 36 through 44 carry? All those in favour? Opposed? Sections 36 through 44 carried.

Section 45.

Mr Hardeman: I move that subsection 76(2) of the Planning Act, as set out in section 45 of the bill, be amended by striking out the portion that precedes clause (a) and substituting the following:

"Same

"(2) Section 1, subsections 16(2), (3) and (4), 31(3.1) and (3.2), 35(1), (3) and (4) and 51(28), (29) and (30) of the act and Ontario regulation 384/94, as they read on November 15, 1995, continue to apply to a detached house, a semi-detached house or a row house if on or before the day on which subsection 21(1) of the Land Use Planning and Protection Act, 1996 comes into force."

This is the changing of the effective date as it relates to the apartments in houses, changing it to date of proclamation as opposed to date of introduction of Bill 20, to deal with the issue of municipalities that may or may not have known of the existence of Bill 20 that have issued permits on houses that were being constructed during that time frame, and also for those people who had started the process. The committee will be aware—we heard presentations, particularly in the city of Ottawa—of a gentleman who had gone to quite extensive work to arrive at a second unit; not that he suggested that he supported the principle, but he felt that if it was legal, he should be allowed to do it. He had expended a lot of money and he did not want to be denied now, after that investment. The government feels that it's appropriate to put the time line on the date of proclamation and everyone existing at that time would be grandfathered under Bill 20.

Ms Churley: Just a suggestion: Some of us say "grandparenting" these days instead of "grandfathering." That was one suggestion. I know it's not in fashion these days to bring these kinds of things up, but some of us keep trying.

I just want to thank the government for listening to this. It was clearly pointed out to us that this would have created some real hardship through nobody's personal fault, and I'm glad that I can support this amendment. It's one of the few recommendations before us today from the government side that actually show a little bit of good common sense.

Mr Bradley: I will indicate our support for this. I would warn Ms Churley that whenever one commends the government, it can appear in a government newsletter.

I recall reading a statement of a complimentary fashion that I made in the House about the member for Etobicoke-Lakeshore, Mr Kells.

Ms Churley: I read that.

Mr Bradley: I read it in his brochure that came out, excerpted appropriately, of course.

Anyway, I do believe it is fair to do it this way. I think there's a lot of sense to what is proposed. We're not leaving some people in limbo. We're making certain that everyone knows the law is passed. I'm sure you'll have some kind of information out when the law is passed that will tell everyone it is passed.

The other thing I would note, though, that is of great interest is that you're going to grandparent this, but when it comes to the development charges for the developers, that provision stays at November 1 for municipalities. If I read the bill further on, the developers are going to get their way because the municipalities will know that, as of November 15, on development charges the rules change. But in here it's the proclamation of the bill. I just note that as a matter of interest.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Let's just finish section 45. Is it the favour of the committee that section 45 carries as amended? All those in favour? Contrary? Section 45 carries.

Seeing as it is noon, we will recess for one hour and return at 1 o'clock.

The committee recessed from 1200 to 1307.

The Chair: Seeing a quorum present, I call the meeting back to order. We left off at section 45. The first order of business will be section 29, which we had suspended debate on to allow an opportunity over the lunch-hour for the other two parties to review the amendments. Whenever you're ready, Mr Hardeman.

Mr Hardeman: It's just a great feeling to have everyone waiting on one.

The Chair: I should be castigating Mr Bradley. The first amendment is one of yours.

Mr Bradley: I found it. Section 29.

I move that subsection 29(3) of the bill be struck out and the following substituted:

"(3) Subsection 51(17) of the act, as re-enacted by the Statutes of Ontario, 1994, chapter 23, section 30, is amended by striking out the portion that precedes clause (a) and substituting the following:

"Contents

"(17) The applicant shall provide the approval authority with such information and material as the approval authority considers necessary to determine the application, including as many copies as the approval authority may require of a draft plan of the proposed subdivision drawn to scale and showing."

The reason I am proposing this: The existing act and the Ministry of Municipal Affairs and Housing can determine in part what constitutes a complete application. Currently a complete application as defined does not include enough information for council to make an informed decision on the planning merits of an application. For example, a preliminary stormwater management report is not prescribed information for subdivision

applications nor is the soil study if the site was formerly used for industrial purposes. In such instances, how can a municipality make a sound decision that safeguards the interests of the community and the environment?

When presented with an inadequate application, the time limits prescribed in the act will continue to run and a proponent may then appeal to the OMB if a decision has not been made. Municipalities must have the authority to pass a bylaw setting out what information is required for a complete application in addition to the legislated and provincial prescribed information. This will ensure better and appropriately local level implementation of planning decisions. Neither Bill 20 nor Bill 163 achieved the intent of the complete application content: to reduce the number of files contained within the planning system that contain inadequate information and to make it clear to applicants what will be required in the application.

I've given I think a couple of examples of the kind of information that should be made available. What the province prescribes and what a municipality may want are two different things apparently. There's no question that a preliminary stormwater management report is a necessity, but it's not prescribed information for subdivision applications.

Also, having been Minister of the Environment, I can tell you a soil study is very important if it was a former industrial use. I'm sure the member for Mississauga South, Ms Marland, would agree with me on that, because she's had experience with that, and perhaps even the member for Oakville, who has some industrial sites in his riding. No doubt he will want to join in approval of this particular amendment as well.

Mr Hardeman: We will not be supporting the amendment. I think again it deals with the issue of what starts the time frame for the appeal process. We're not suggesting that municipalities could not require further information in dealing with their applications, but I don't think it's appropriate to suggest that the municipality should have a bylaw that outlines all the things that are required. That would be far too onerous to comply with.

To start an application, there may be many cases where further information is required as the application is being processed and evaluated, but we need a set time when the clock starts to tick on the application. We believe that's appropriate. That's a standard the province sets so everyone is aware what must be supplied for an application to be complete, for the review to start. So we will not be supporting this. We believe that prescribed information should be the same for everyone. Beyond that, the municipalities can require further information as they review the application.

Mr Bradley: It would seem sensible, however, that that information be provided at the earliest possible opportunity as opposed to somewhere along the line. These are two obvious examples I've given you. I wish the province would prescribe that if municipalities can't. Because the province is not prescribing that, I'm suggesting that municipalities should have the opportunity to do so. I'm of the view that the earlier this information is available the better off everyone will be. It may be that a plan that's dreamed up in someone's head may disap-

pear completely if, through the soil testing, there's a determination that it would be impossible to build.

Let me give you one example that you Tories will like particularly, and that's Ataratiri down in Toronto. I can well recall cautioning the cabinet of the day that that would never fly. We're not supposed to talk about cabinet deliberations, so I'll say it was outside of cabinet. I said to some of my colleagues that the cost of bringing the soil up to a standard which would be acceptable for residential development would be extremely high. I remember I was chastised by an individual who worked for the city of Toronto at the time saying that I was being alarmist, and of course by some of my cabinet colleagues who thought I was as well.

As it turned out, you see that Ataratiri is not going to fly, and one of the reasons it's not going to fly is because of the soil problems. Had there been some significant work done before this even got off the ground on the soil, I think more people would have been cautioned against proceeding. But it got well down the line and now subsequent people are going to pick up the tab for this particular development.

That's why I'm proposing it. If the province prescribed that, I would say fine, we don't need this. Stormwater management as well is extremely important for subdivision applications, but I must focus on that soil study. There may have been a time when you could build on those old industrial sites without too much of a soil study taking place. There are now standards which have been established for the reclamation of those soils, and in some cases it is not economically feasible to implement a plan because the soils simply are not acceptable for residential purposes. They would be acceptable only for some other industrial purpose.

That's why I'm proposing this. Again, it's a common-sense proposal that I'm making here and I thought it would gather good support, particularly from those who've had some municipal experience either in a staff capacity or an elected capacity.

The Chair: Seeing no further comment, I'll put the question. All those in favour of the amendment? Opposed? The amendment fails.

Further amendments? Mr Bradley.

Mr Bradley: I have a further amendment. It's to do with subsection 29(4) of the bill and it reads as follows:

I move that subsection 51(2) of the Planning Act, as set out in subsection 29(4) of the bill, be struck out and the following substituted:

"Meeting

"(20) At least 14 days before a decision is made by an approval authority under subsection (31), the approval authority shall ensure that a public meeting is held, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed.

"Same

"(20.1) An approval authority may request that a local municipality or a planning board having jurisdiction over the land that is proposed to be subdivided hold the public meeting."

Again, this involves public input, which we have felt all along is very important. We had representations made

by a number of people to the committee when I was in Hamilton, and I understand in other places. What this motion in effect does, and it's a very key motion in this bill, is it re-establishes the requirement for a public meeting on a subdivision. This is about retaining public participation in the planning process.

Municipalities and developers will end up spending more time and money on rearguard actions, trying to meet the demands of shut-out citizens, than would be the case if contributions were taken advantage of at the beginning. The meeting held at the official plan amendment or zoning stage can be no substitution for the subdivision meeting, as there are not enough details generally available at this early stage.

I have noted one of the changes since I left office at the municipal level and came to the provincial level—I think it's a change in there—is that there seem to be more of these public meetings taking place. When I watch my own city council on cable television, I notice that at 8 o'clock the mayor will say, "It's now time for public meetings." It's interesting to see. In some cases, there are no objections registered. There may be some representatives of the developer there to say it's a great development coming forward and that everyone should approve.

1320

But this is rather fundamental, it seems to me. Those of us who have served at the municipal level and have observed the municipal level understand how important this public meeting is for subdivisions. I shouldn't be surprised, but I am surprised, that the government would go so far as to remove this particular requirement. I know you think you're speeding up the process and that some of these people are tedious and bothersome, and there may be occasions when some of the submissions are vexatious, as the lawyers say.

However, I think it's good for the system. I think a lot of the problems are solved at this stage when people have this information brought forward. The developer hears from people and is then able to address some of the problems, maybe address some of the questions at the very time; there may have been a misinterpretation of the proposal by someone who wishes to object. This is a great opportunity for that exchange to take place and for the developer to either make a modification or provide an explanation that eases the concern of the individual or individuals or groups making representations against a proposed development.

I think if we remove this, you're really taking a major step backward in terms of public participation. It reinforces the theory of some people in the province that this is simply a bill designed to cater to developers, who strongly supported the Conservative Party in the last election. That is what they're saying to me. I'd like to think it's not; I'd like to think, "I proposed this amendment, and these people are going to demonstrate it's not entirely for that purpose, that indeed they believe in public participation." That's why I'm looking forward to the support of the government members to ignore the parliamentary assistant and simply vote as their conscience dictates as opposed to how it is recommended by the parliamentary assistant.

Mr Hardeman: The government will be voting against this motion. One of the reasons it was left out of Bill 20 was, as Mr Bradley said, that many times he has watched city council and they have the section with public meetings and a lot of issues are not being spoken to. Under Bill 163, even in those areas where there was no one there to speak to the application, there was another two-week delay in having that application approved because of the requirement that the public meeting be held at least 14 days prior to the decision of council.

The government members too were on the committee that heard the public presentations and the concern expressed about the removal of the requirement to hold a public meeting, so we have introduced a motion that was distributed to the committee members this morning that does exactly what this does, but it includes a further clause that we believe is required in the legislation. So I will not be voting for this resolution, recognizing that our amendment will do things identical to this but with an added-on section.

Ms Churley: Can I get some clarification on that? Are you saying you presented an amendment this morning that's new and we haven't dealt with it yet?

Mr Hardeman: The next amendment, the government amendment, will be to deal with this section of the bill.

Ms Churley: Oh, I see. I haven't looked at that yet. To determine whether I'm going to support this or yours, what is the major difference between them?

Mr Hardeman: The government amendment will have an addition that the holding of that public meeting can be requested by the approving authority, request that the lower tier hold the meeting and notification of that meeting.

Ms Churley: So in other words—

Mr Murdoch: In other words, just trust us, Marilyn.

Mr Hardeman: I've just been informed there's also a requirement in our motion to give notice of the application.

Ms Churley: In other words, as Mr Murdoch said, "Trust us." Just kidding. You didn't mean that, did you?

Mr Murdoch: I believe you can trust me, Marilyn; I trust you.

Ms Churley: And so you should.

The difference is that in your amendment—and I'm sorry I haven't read it, but I might as well get clarification now while we're dealing with this motion. Yours is that they would not be required, that they would have the option to call a public meeting within the 14 days?

Mr Hardeman: In the subsection of our amendment, it will require that notice of the application be given "if required by regulation, in the manner and to the persons..."

Ms Churley: So there has to be a regulation.

Mr Hardeman: There's also the responsibilities at the bottom of our amendment that would not be covered in the Liberal amendment.

Ms Churley: I would support the Liberal motion before me because I believe it's stronger. In my quick reading of this, it appears to me that under the motion that will come before us, there is some opting out possible, that a meeting is not absolutely required within that 14-day time period. Am I right?

Mr Hardeman: I stand to be corrected, but I don't believe that's the case.

Ms Churley: I'll wait until you're clear on that.

Mr Hardeman: The legal staff did not hear the question, Ms Churley, if you could repeat it, please.

Ms Churley: I'm trying to determine the main difference between the Liberal motion before us and the one following, the Conservative government motion. What would you say is the main difference between the two of those?

Mr Bradley: If legal counsel wants to talk directly to us, it's all right.

Ms Churley: Yes. Can we have unanimous consent for legal counsel—

Mr Hardeman: There are three differences. In the notice requirement, as was just read into the record, there is a difference. With the amendment before you now, it would be in the act that the public meeting will be held. The amendment that we will be putting forward is the same as it is in Bill 163, that it can be required to be held by regulations.

If the amendment before you now is approved, it would mandate in the bill that the public meeting be held 14 days prior to. Presently, Bill 163 says that, by regulation, those meetings can be required. Plan of subdivision meetings are presently required by regulation.

Ms Churley: What you're doing, then, is putting back the Bill 163 clause.

Mr Hardeman: Yes.

Ms Churley: Okay.

Mr Murdoch: It must be okay.

Ms Churley: No, not necessarily.

Mr Bradley: Marilyn, excuse me, if I can intervene here, if you'd let me.

Ms Churley: Please.

Mr Bradley: The question is then, if it's done by regulation, you can change the regulation without the approval of the Legislature, but if it's done in the act, you can't change the act. From the opposition point of view, we would probably believe it's better in the act than it is in a regulation that you can change without us knowing or without us having participation.

Ms Churley: Thank you. That's helpful. I'm not sure why in Bill 163 it was determined to go that route, but today I certainly support the Liberal motion because it's stronger. It adds the requirement for public meetings. Particularly in light of the lack of public participation in the process throughout this bill, which has been cut out in so many cases—time frames cut down, in some cases no public participation at all—I would like to err on the side of caution here and strengthen this clause as best as possible so that we know that within the bill, within the law, there has to be a public meeting, that it can't easily be changed by a regulation. I believe it's absolutely fundamental. I have no problem suggesting that we go beyond what was in Bill 163 and enshrine this in the law. 1330

Mr Bradley: Another concern I have about going the regulation route is that the government at this time is looking to eliminate regulations. My good friend the member for Lincoln has been charged with the responsibility, along with Dr Galt, of looking at all the regula-

tions that exist in government and eliminating them. Knowing my good friend Mr Sheehan as I do, I've never known him to be a great fan of regulations of any kind, so this may be one regulation that might disappear. If it's going to disappear, I would prefer to have a debate in the Legislature where the opposition has input, where public hearings maybe take place, as opposed to it being done behind closed doors with the cabinet and then just being announced somewhere. That is why I feel having it in legislation is superior to having it in regulation.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment fails.

Further amendments?

Mr Hardeman: I move that subsection 51(20) of the Planning Act, as set out in subsection 29(4) of the bill, be struck out and the following substituted:

"Notice

"(20) At least 14 days before a decision is made by an approval authority under subsection (31), the approval authority shall ensure that,

"(a) notice of the application is given, if required by regulation, in the manner and to the persons and public bodies and containing the information prescribed; and

"(b) a public meeting is held, if required by regulation, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed.

"Request

"(21) An approval authority may request that a local municipality or a planning board having jurisdiction over the land that is proposed to be subdivided give notice of the application or hold the public meeting referred to in subsection (20) or do both.

"Responsibilities

"(21.1) A local municipality or planning board that is requested to give the notice referred to in clause (20)(a) shall ensure that,

"(a) the notice is given in accordance with the regulation made under clause (20)(a); and

"(b) the prescribed information and material are submitted to the approval authority within 15 days after the notice is given.

"Same

"(21.2) A local municipality or planning board that is requested to hold the public meeting referred to in clause (20)(b) shall ensure that,

"(a) notice of the meeting is given in accordance with the regulation made under clause (20)(b);

"(b) the public meeting is held; and

"(c) the prescribed information and material are submitted to the approval authority within 15 days after the meeting is held."

This is the motion referred to in the previous discussion to deal with the holding of a public meeting as it relates to plans of subdivision. We heard many comments as we went around the province from delegates who spoke to the public meetings for plans of subdivision, and invariably those who spoke to it spoke to the need to retain the system as it presently existed in Bill 163. The purpose of this amendment is to do just that.

Ms Churley: I support this amendment and I'm glad to see that you have inserted that back in the bill.

Mr Bradley: I believe it is always better—not always, but most of the time it's better to have something in legislation than regulation. I still believe this is one area where there has been some movement, and where there has been some movement I think it's worthy of being supportive of that. I think it's some significant movement in this case. I still have that preference, as I say, especially knowing how enamoured many in this government are with government regulations, to see this in legislation. I guess this is saying it's better to get a kick in the shins than a kick in the face.

The Chair: Further conversation? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Further amendments?

Mr Hardeman: I move that subsection 29(15) of the bill be struck out.

The Chair: Sorry, Mr Hardeman, you've gone out of order.

Ms Churley: I think I'm drowning in paper. We all are by now. The parliamentary assistant is too, I believe. My motion is section 29 of the bill, section 51 of the Planning Act, right?

The Chair: Yes.

Ms Churley: Can I stand that down for a moment while I clarify my own notes here?

The Chair: Well, yours is identical to the Liberal motion that's about to follow, so if we stand that down we'll be debating the same topic.

Ms Churley: All right. I'm happy to stand it down and let the Liberal motion go ahead.

Mr Bradley: I'm looking at subsection 29(6), an amendment. That's what I have in chronological order.

Ms Churley: Yes, that's why I'm lost. I'm confused, too.

The Chair: I don't have one for 29(6); 29(14) is the next one.

Mr Bradley: Let me see if I can find it in here. You may be correct in assuming you don't have it.

Ms Churley: I have now found my piece of paper.

The Chair: Is it before or after 29(6)?

Ms Churley: After.

Mr Bradley: Mine is a motion that's been prepared for the Liberal Party but is not in your package for distribution, so I could also stand it down if you want. I'll tell you what it deals with; tell me whether I'm in order. It dealt with subsection 29(6) of the bill, subsection 51(34) of the Planning Act. It's a motion that would allow appeals of subdivisions directly to the OMB, as Bill 20 does with official plans. The present process of referring a plan of subdivision to the Ministry of Municipal Affairs and Housing or regional government is an unnecessary step. If it's out of order, it's out of order. I'm sorry, because I don't think you have a copy of this.

The Chair: Mr Bradley, with your indulgence, could we ask for unanimous support to stand that down while we make copies for the members?

Mr Bradley: That would be fine, thanks.

The Chair: Ms Churley?

Ms Churley: Should I read the actual motion again? I move that section 29 of the bill, section 51 of the Planning Act, be struck out.

The Chair: Forgive me. Could you read that again?

Ms Churley: Section 29 of the bill, section 51 of the Planning Act. Is that what you have?

The Chair: Do I have a different one, or are you just leaving things out? Is it 29(14)?

Ms Churley: Yes.

The Chair: Perhaps you could read it in its entirety.

Ms Churley: Let me read that once again. Subsection 29(14) of the bill, clause 51(53)(a) of the Planning Act:

I move that subsection 29(14) of the bill be struck out. 1340

This one again deals with the premature OPA application. I won't go into the details all over again as to why I want this struck out, but all the reasons are in the record. I stand by those concerns and would ask the government to support me on this resolution.

Mr Hardeman: The government will be voting against the resolution as explained by the member. The prematurity clause to eliminate the right of an individual to be heard because of the criteria used by the approving authority to deny an application I believe is not consistent with the other directions we're taking in Bill 20, that everyone should have a right to be heard and have their day to have the decision made based on the merits of the case as they relate to all the issues related to the planning application.

Mr Bradley: Ms Churley, that appears to be a reasonable explanation you have on that. They say you're going to be shot down. The government is disagreeing with you.

Ms Churley: Where are we now?

The Chair: Your motion.

Ms Churley: I still support my motion.

Mr Hardeman: We've concluded the debate and we're ready for the vote.

Mr Bradley: I could make a speech, but I won't.

The Chair: If there's no further discussion, I'll put the question. All those in favour of the amendment? Contrary? The amendment's defeated.

You will note that the Liberal amendment was exactly the same, so we won't deal with that. Any further amendments?

Mr Bradley: On section 29(6), I'm not going to move an amendment. I had indicated that I had one that hadn't been distributed. I know now why it wasn't distributed. I'm going to withdraw it. I like proposing amendments with which I agree, that's why.

Mr Hardeman: I move that subsection 29(15) of the bill be struck out.

Since the provisions to hold a public meeting for plans of subdivision have been restored, the provision in clause 51(53)(b) of the act also should be restored.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment passes.

Is it the favour of the committee that section 29 carry, as amended? All those in favour? Contrary? Section 29, as amended, carries.

Section 30.

Mr Hardeman: I move that subsection 53(5) of the Planning Act, as set in subsection 30(1) of the bill, be struck out and the following substituted:

"Notice

"(5) At least 14 days before a decision is made by the council or the minister, the council or the minister shall ensure that,

"(a) notice of the application is given, if required by regulation, in the manner and to the persons and public bodies and containing the information prescribed; and

"(b) a public meeting is held, if required by regulation, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed.

"Request by council

"(6) A council may request that a local municipality having jurisdiction over the land that is the subject of the application for consent give notice of the application or hold the public meeting referred to in subsection (5) or do both.

"Request by minister

"(7) The minister may request that a local municipality or planning board having jurisdiction over the land that is the subject of the application for consent give notice of the application or hold the public meeting referred to in subsection (5) or do both.

"Responsibilities

"(7.1) A local municipality or planning board that is requested under subsection (6) or (7) to give notice shall ensure that,

"(a) the notice is given in accordance with the regulation made under clause (5)(a); and

"(b) the prescribed information and material are submitted to the council or the minister, as the case may be, within 15 days after the notice is given.

"Same

"(7.2) A local municipality or planning board that is requested under subsection (6) or (7) to hold a public meeting shall ensure that,

"(a) notice of the meeting is given in accordance with the regulation made under clause (5)(b);

"(b) the public meeting is held; and

"(c) the prescribed information and material are submitted to the council or the minister, as the case may be, within 15 days after the meeting is held."

This amendment does the same in section 30 for consent decisions as it does in section 29 for the plans of subdivision.

The Chair: Further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Any other amendments?

Ms Churley: I move that subsection 30(12) of the bill be struck out.

I move this because, once again, it deals with the premature OPA application.

The Chair: Further discussion?

Mr Bradley: Once again I will make the plea; I'm sure it will fall upon unsympathetic minds. I was going to use another saying, but I was told you can't use it in 1996 because it's politically incorrect.

Mr Murdoch: You might have to withdraw it.

Mr Bradley: No, I wouldn't have to withdraw, but it's politically incorrect, as they say.

It's not going to evoke any sympathy in the government side, but it goes back to the issue which I think

must be reiterated, that is, the prematurity test. I think you're going to see these proposals moving forward too much, too quickly, when there are no services existing and no evidence that services are going to be existing within a period of time. It's the old prematurity test, the power of the OMB to dismiss matters regarding a consent on the basis of prematurity. The arguments have been made, essentially. Obviously, the government and the opposition disagree and we'll be having a vote.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment's defeated.

The identical Liberal motion can be dispensed with. Further amendments?

Mr Hardeman: I move that subsection 30(13) of the bill be struck out.

This deals with the fact that since the provision for holding a public meeting for consent is restored, the provision in clause 53(31)(b) of the act should also be restored.

Mr Bradley: It makes sense.

The Chair: Further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Is it the favour of the committee that section 30, as amended, carry? All those in favour? Contrary? Section 30, as amended, carries.

Back to 46. Are there any comments, suggestions or amendments to section 46?

1350

Mr Bradley: Section 31 of the bill, does the government have an amendment to that?

The Chair: We already dealt with everything from 31 to 45.

Mr Bradley: All of those?

Mr Murdoch: We're up to 46.

The Chair: Section 31 lost.

Mr Bradley: Section 32?

The Chair: Section 32 lost, 33 won.

Mr Bisson: These are all the motions that we didn't do this morning that we deferred.

Mr Bradley: All right, fine. That makes sense.

Mr Bisson: Just for a point of clarification, those are all the amendments that we had deferred this morning that you just dealt with as I walked in.

Mr Murdoch: Yes.

The Chair: There are no amendments to section 46? Comments? Is it the favour of the committee that section 46 carry? All those in favour? Contrary? Section 46 carries.

Section 47.

Mr Bradley: I have a Liberal motion. We recommend voting against section 47 of the bill.

The Chair: That's not a motion, Mr Bradley, and if it were, it would be out of order. But thank you for your comments.

Mr Bradley: I'm just doing an impersonation of the parliamentary assistant.

The Chair: You just can't use the word "motion." Any further comments? All those in favour of section 47 carrying? Section 47 carries.

Section 48.

Mr Hardeman: I move that subsection 48(1) of the bill be struck out.

This amendment deletes subsection 48(1) of the bill because it was a complementary amendment resulting from the proposed changes to the minor variance system. This section is no longer needed.

The Chair: Further discussion? Seeing none, all those in favour of the amendment? Contrary? The amendment carries.

Is it the favour of the committee that section 48, as amended, carry? All those in favour? Contrary? Section 48, as amended, carries.

Section 49.

Mr Hardeman: I move that clause 4(4)(d) of the Development Charges Act, as set out in subsection 49(1) of the bill, be amended by striking out "subsection (3)" in the fourth line and substituting "subsections (3) and (3.1)."

This motion is to ensure that an affidavit or declaration by the clerk of a municipality, as set out in clause 4(4)(d) of Bill 20, in the record to the Minister of Municipal Affairs and Housing includes reference to the requirements for the timing of notice of a bylaw passed by the municipality contained in subsection 4(3.1) of the act.

This requirement does not add additional administrative costs to the municipalities. Where a municipality passes a bylaw after November 16, it must forward a record to the minister. This amendment provides assurances to the minister that the notice provisions to permit persons and organizations to submit their concerns about the bylaw have been complied with.

The Chair: Further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Further amendments?

Mr Hardeman: Mr Chairman, I move that section 4 of the Development Charges Act, as amended by subsection 49(1) of the bill, be further amended by adding the following subsection after subsection 4(4.1):

"Refund

"(4.2) If the minister refuses to approve all or part of a bylaw, the municipality shall refund the development charges paid under the bylaw or the part that is not approved, and must do so within 30 days after the municipality receives notice of the minister's decision."

Mr Bradley: Again, if you look at some of the key parts of the bill that we focused on, this is a key part of the bill. This is a part of the bill that if one were suspicious, one would suspect it were written by the developers—

Mr Baird: But you're not suspicious.

Mr Bradley: —because it is clearly going to work against municipalities and against the existing people in municipalities and in favour of the developers. When we were in Hamilton, I asked the developers, the one group that came in, "Were you enthusiastic about this bill?" and they seemed to be very enthusiastic about the bill. One of the reasons they were enthusiastic was the provision which now allows the minister to rule on further development charges.

The purpose of development charges, we will recall, is so that new developments shall pay their fair share of the

new facilities which are going to be required within a municipality. We always think of the roads, we always think of the sewer and water. We get into street lights, we get into schools, we get into parks, libraries, fire services and so on when we extend it. So development charges were put in place so that when development took place, it would not be the entire municipality, many of whose citizens had already paid for their own services and other services. Those people would not be required to pay for the new services.

These new powers to the minister under Bill 20, in my view, are not good powers for the minister to have and will work to the detriment of municipalities. Keep in mind that the province is cutting back its funding to municipalities and at the same time it says, "But of course, if you want to reflect your new costs in terms of development charges, this minister is going to keep a careful eye on you and prohibit you in some cases from doing so." That forces the municipality either to not provide some kind of service or, on the other hand, to raise municipal taxes. Of course, it's then the municipality that gets the flak, rather than the provincial government.

I think members of the committee should know that not only do we have the minister now interfering on behalf of developers, but this amendment would further penalize municipalities by forcing them to pay back lot levy funds which the minister feels were collected improperly. They would have collected the funds, probably spent the funds, and then the minister, probably at the behest of the developers—because the developers will make representations to the minister—will say, "That was an improperly imposed lot levy and you have to pay it back." So this is a further detriment to municipalities.

I wish municipal councillors across the province knew what was in this bill. I know some of them rub their hands at the fact they think they're getting some additional powers, but what they don't see are the other provisions in here. When they find that out, I think some of them may change their minds, at least those who aren't always acquiescing to every wish of developers.

Ms Churley: I support the comment from my Liberal colleague. I recognize and I think it's fair to say that when we were the government we realized that there were some problems with the Development Charges Act and that it's not necessarily a bad thing to take a look at it. I have no opposition to taking a look at the bill. What I'm strongly opposed to is the direction which this government is going, for the reasons that my colleague stated, particularly with the cuts to transfer payments to municipalities. Municipalities are going to be very hard pressed.

1400

I don't quite understand why you would in this case arbitrarily reach in and tell municipalities how and when they should charge development fees. You seem to trust municipalities, for instance, in doing the right thing when it comes to environmental protection. Why not trust municipalities to determine what makes sense in their own locality for the development of their region? It just doesn't make sense except that, as my colleague said, you have listened very closely to the developers here. Of

course the developers would like this change. Absolutely. Why wouldn't they? But I think it was wrong for the government to cave in to that.

The definition of "hard services" is very narrow. It relates to sewers and that kind of thing. Who's going to build the schools, the libraries, the community centres, the other aspects of development that are so very important to the people living there? Ultimately, somebody has to pay for that.

Now, you could argue, and I know that developers have argued, that it brings the cost of the new development up too much for homeowners. I agree that there have been some problems, and it has to be looked at, but obviously it's a mistake to think that municipalities are going to be able to afford to pick up those costs. At the end of the day, what we're going to have here is something that this government said is very undesirable, and that is higher municipal taxes, which is something that municipalities are having to struggle with right now because of the massive cuts in transfer payments. They will really have no choice but to raise taxes and ask for the general population to pick up the costs of these charges. I think it's a big mistake and not very well thought out.

Mr Bisson: I have a couple of questions before I actually make my comment, just to make sure I understand this properly. Does the Minister of Municipal Affairs and Housing now, outside of Bill 20, have the right to disapprove of a bylaw of a municipality? I think the answer is no, isn't it?

Mr Hardeman: The answer is no, yes.

Mr Bisson: Okay. So that means to say that if I was the municipality of the city of Timmins and I passed a bylaw that said I'm going to charge development charges on soft services in my community, I could legally do that as a community, and the minister can't rule otherwise.

Mr Hardeman: Yes.

Mr Bisson: Okay. Now, if I understand what you're doing here, it's that under this particular subsection you're saying the Minister of Municipal Affairs will now have the power to say a municipal bylaw is null and void.

Mr Hardeman: The municipal development charges bylaws were prepared when the Development Charges Act was implemented, prepared at great time and expense for municipalities, to justify the amount of the development charges for the municipal services required by that new development. A lot of those bylaws are running out at this time. The minister has come to the conclusion that a fundamental review of the Development Charges Act is required. It was felt to be inappropriate to have municipalities going to great expense to prepare a new development charge bylaw which in fact may or may not fit the criteria in a year's time.

It was also recognized that there was going to be a need for some municipalities, through extenuating circumstances, to increase their development charges in that interim period of time. This is to allow the minister to approve those types of increases while letting the municipal sector know that the Development Charges Act is being reviewed and they should not change their bylaws until that is complete. So they can implement a bylaw that would serve the needs of the Development Charges Act.

Mr Bisson: Let me try this again. If you were not to make this motion and (4.1) was to stand as is, the Minister of Municipal Affairs would have the right to approve or disapprove of a bylaw no matter what the issue was.

Mr Hardeman: No.

Mr Bisson: If I was to read—bear with me—section 4.1 prior to the amendment, you're saying, "The Minister of Municipal Affairs and Housing may approve or refuse to approve a bylaw in whole or in part, in his or her absolute discretion, and his or her decision is final." That means to say that it would be outside of even development charges bylaws.

Mr Hardeman: In clarification to the amendment, the amendment is on the timing of the development charges, not on the minister's right to approve or not to approve. Section 48 dealt with that.

Mr Bisson: Let me try to word it another way. Can the minister refuse a bylaw of a municipality other than a bylaw that deals with development charges with this clause? That's issue number one. Are you giving this power only strictly on bylaws that deal with development charges?

Mr Hardeman: With this clause?

Mr Bisson: Yes.

Mr Hardeman: With this clause, this relates only to the timing of the minister's power, not the power itself. The power itself was dealt with in the previous section.

Mr Bisson: But that's the point I'm trying to make here. I asked the question at the very beginning of this. Prior to Bill 20, did the Minister of Municipal Affairs have the right to say that a bylaw was null and void dealing with development charges?

Mr Hardeman: No.

Mr Bisson: Okay. He will now have that power?

Mr Hardeman: Yes.

Mr Bisson: Okay. Thank you. Now I get to the next part. There are two parts to this. Let's deal with the easier one first.

If, let's say, the city of Timmins passed a bylaw in 1992 dealing with development charges as they apply to soft services, could the minister under this clause repeal the bylaw of 1992?

Mr Hardeman: No.

Mr Bisson: What's the time frame—from the enactment of this act?

Mr Hardeman: The minister has the power to approve bylaws in those bylaws where the municipality is proposing to raise the development charges. The other parts of the act authorize the extension of the existing development charges bylaws or the lowering of the development charges within their bylaws without minister's approval. The only minister's approval required is those cases where there are extenuating circumstances and the municipality deems it appropriate to have to raise the development charges. That would require the minister's approval.

Mr Bisson: But those bylaws that have already been passed, if I have a bylaw in my municipality dated 1992 that says we're going to charge development charges on soft services, will this clause give the minister the power to make that null and void?

Mr Hardeman: No.

Mr Bisson: So the question I ask is: This will then become the law, this will only apply on enactment of the law. So if the city of Timmins, after this law is enacted, wants to pass a bylaw on development charges they will have to get approval from the minister?

Mr Hardeman: If that bylaw on development charges raises the level of their present bylaw, it would require the approval of the minister. If they presently do not have a development charges bylaw, they could not implement one now without the minister's approval.

Mr Bisson: You realize that this really could lead to quite a political interference by the minister. This is really leaving the minister open to pressures by developers to—

Mr Bradley: Donate.

Mr Bisson: —donate to the minister. I guess I've got no other way of putting it. This is really a political clause. If I'm a developer and I've got an in with the Minister of Municipal Affairs, I can have the minister do all kinds of wonderful things for me through this. This is really developer-driven, isn't it?

Mr Hardeman: My answer would be no.

Mr Bisson: It better be or else you won't be the parliamentary assistant.

Mr Hardeman: That's not the way I would interpret this section.

1410

Mr Bisson: Would you agree there is a danger that the minister could be put in a position, if he or she chose to be put in that position, to be friendly to a developer and to rule a particular bylaw of a municipality out of order? Not out of order, but make it null and void? Could it happen?

Mr Hardeman: This section does not give the minister the authority to deal with the existing bylaws that are in place or any municipality that, for their own reasons, decides to lower it.

Mr Bisson: That's not what I'm saying. What I'm saying is that if the city of Timmins was to pass a bylaw after this act is put into law that deals with development charges—in other words, increases development charges on soft services—the developer can go to the minister and have that whole thing overturned. It seems to me that the minister is being put in a position that he could be seen as the developers' minister. I think this is very political. I think this is dangerous.

Mr Bradley: Let me describe how it's a difficulty—

Mr Bisson: I'm trying to be polite here. That's the problem.

Mr Bradley: In the same vein, let me describe how it's a difficulty for the minister. It's almost a no-win situation for a minister. First of all, I think, for the municipalities, they're the losers in this, and the people who reside in the municipality who are already there, as opposed to the new people coming in.

It's very dangerous for a minister, because under our system, ministers may receive political donations. So that could influence a minister one way or another, and I'm not saying it in a detrimental way.

Mr Murdoch: Oh, now.

Mr Bradley: No, I'm saying in the opposite way. You have to listen carefully.

Mr Murdoch: I am listening carefully.

Mr Bradley: That may even in the opposite way influence a minister. In other words, a developer may ask, and may in the mind of the minister have a legitimate case in asking, that a charge be denied. However, that developer has either given a donation to the minister or to a member of the governing party or to the governing party, and the Globe and Mail searches the election finances commission and says, "Aha, this is the reason"; they draw this conclusion. So the minister, to be safe, if he has received or the government has received a substantial donation from the developer, might well turn down the request of the developer so it doesn't appear as though the minister is showing favouritism to that person. So it can happen. You see the position you place the minister in with this, because of our method of financial donations, and they are public, and developers are known to make donations.

So the problem the minister is faced with is—I can certainly understand the minister faced with this situation—does the minister want to read on the front page of the Globe and Mail that he prevented a municipality from raising—let's say, Owen Sound, because of the member across. He says to Owen Sound, "We're going to agree with you, Owen Sound, and not with the developer," because the minister is thinking in his mind, "If I take the developer's side and they see that the developer's donated to me," or in this case, the Conservative Party, if they're in power, that's going to influence the minister's decision, perhaps. You'd be surprised how that would. I would certainly, if I were the minister, think very carefully about showing any favouritism, even if I thought the person were right, if there was a perception out there that the reason was money donated.

When you give the minister this kind of power, that's what happens out there. That's where the minister's on the hook. That's where the minister faces maybe unfair criticism, maybe fair criticism.

Again, for the municipality, I think the municipalities are the losers. I wish AMO would tell the municipalities, since they're busy applauding parts of this bill—the officials of AMO, whose hands may be bruised from applause, should be telling the municipalities about this aspect of the bill.

Mr Murdoch: I don't think that'll happen, Jim.

Mr Sean G. Conway (Renfrew North): Let me hear from the parliamentary assistant again, because I think if I were a Boy Scout or a Girl Guide I'd be disposed to believe in this Pollyanna world of how development pressures operate. But you know, if you've had any experience in the real world—God, if you search the annals of the Ontario legislative history, when you go the library there's a stack of judicial inquiries and royal commissions into development politics, shall I say. So I think Mr Bradley does raise a concern for anybody who has a concern about what might happen here. But I also am struck by the fact that one of the fundamental principles in this policy, and the bill that springs from it, is more power to the people, and in a good, Jeffersonian way, more power to the city of Woodstock or the county of Oxford.

How is it that in this respect, the people of Oxford, whether they're a local school board or a local council,

can't be trusted to make a reasonable judgement? And even where they make a less-than-perfect judgement, why shouldn't they be exposed to public pressure, at the local level, from developers and perspective homeowners or whomever that will have to pay the charges? I think we're all sensitive, on the basis of the testimony, to the problem here: that some people can't resist the temptation to pass along additional costs. But I just want to know, given what you've said about this policy: How again is it that the Oxford County Board of Education or the city of Woodstock just shouldn't be trusted here without the school-marmish oversight of the imperial authority at Queen's Park?

Mr Hardeman: I think throughout the bill and throughout the policies that we have put forward so far, the direction is for local autonomy because I and the government believe that we can trust the local municipalities. We have come to the conclusion during the review of the Development Charges Act that we should not have municipalities, under false pretences, be preparing new development charges bylaws that they implement and then find they would have to redo them when the Development Charges Act review was completed. We also recognize that there will be times, there will be circumstances in some municipalities where development charges will need to go up to accommodate the services that are needed for the development. Under those circumstances, the minister would grant an exemption to those municipalities to allow them to increase the development charges.

As you have stated, there are times when someone may take advantage of the situation. We are quite confident this section will not have to be used, but if someone was to implement development charges beyond the appropriate level, it will take a certain length of time for that development charge bylaw to come to the minister for review and approval. In that time, if they were erroneously collecting development charges, I think it's fair that those should be returned. And that's what this amendment does, is it provides the onus on a municipality that, under false pretences or under a drastic miscalculation, decided to charge fees that they were not entitled to charge. The bylaw would not be a legal bylaw of the municipality until it was approved by the minister. So if any municipality collected development charges under that bylaw, we think it's appropriate that they refund that development charge.

Mr Conway: Are you then saying—and I may have missed something earlier or that's carried elsewhere in the bill—but do I take it then from that response that this is entirely a transitional matter, that you and your minister on behalf of our provincial government have made it very clear to everyone that once the development charges review is completed and perhaps amendments are brought forward and the act is adjusted consistent with whatever that review produces, are you then telling everyone and would you tell the committee now that it would be the intention of the government to, at that point, surrender the kind of oversight provisions that are vested with the minister in this section?

Mr Hardeman: Yes. I think on every opportunity that the minister has had to speak to those that are affected by

this policy it has been made abundantly clear. I'm not sure I can assure the committee that he has searched out every opportunity to speak on the subject, but on every opportunity where he did speak on the subject he made it quite clear to those involved that this was a transitional process to deal with the development charges while the Development Charges Act was being reviewed.

1420

Mr Conway: So when the act is reviewed, it's the policy of the government that you will then surrender this oversight provision that this particular section of this act now gives you?

Mr Hardeman: Yes.

Mr Bisson: Did I understand you correctly? Let me take it the other way. Why not do this in the Development Charges Act when the Development Charges Act is amended? Could you not do it there?

Mr Hardeman: Again, we have to recognize that the Development Charges Act is not in the Legislature at the present time. It's being reviewed. It was the government's position that—

Mr Bisson: We understand the argument.

Mr Hardeman:—this transition needed to be put in place for that review.

Mr Bisson: I understand what you're saying, this is transitional, but the specific question I'm asking is, could you not do this in the Development Charges Act if you chose to?

Mr Hardeman: In fact, it's just pointed out that it is an amendment to the Development Charges Act. We have opened the act to include this in it to put the transition—

Mr Bisson: That's right, yes. So it is in the Development Charges Act. The point I'm getting at is that it would be best dealt with when we deal with the Development Charges Act, because it seems to me what you're doing here is that you're giving the minister very broad powers to be able to interfere in the due process of a community when it comes to how it deals with development charges. If you have a philosophy that you want to adhere to in legislation, that should be part of the debate around DCA and not around this particular bill. I believe you're really opening up a can of worms here, that your minister can be quite frankly put in a hell of a lot of hot water over this issue. I don't understand the logic. You're saying the transition. When do you plan on bringing in the DCA?

Mr Hardeman: When the review is completed.

Mr Bisson: No, but next fall?

Mr Hardeman: Hopefully, yes.

Mr Bisson: Probably in the fall. Things aren't going to come to an end between now and next fall. Why the rush? Why do you have to do this now?

Mr Hardeman: As I mentioned earlier in my explanation, I think it's a great process and an expensive process for municipalities to develop a new development charge bylaw. We do not believe it's appropriate that they should be forced to do that if the development charges and the framework under which they're going to have to live with development charges changes dramatically in the review of the act. If we did not find a way to deal with the exceptional circumstances in the act to allow some bylaws to be increased without following the

procedure of the present Development Charges Act, we would have no way of funding that infrastructure in a high-growth area.

Mr Bisson: I take it the government wants this to happen, but I'd only say this before we vote on it: Number one, I believe we should deal with this under the Development Charges Act. It's not an issue where you're going to have a raft of communities trying to pass bylaws dealing with this issue. They're probably very much in the minority, the cases that you have.

But I'd only say again that in the interim, until we get the changes made in the Development Charges Act, I can tell you we'll be watching very closely what happens here, because what you end up with, no matter what the minister decides when it comes to an application before him, depending on how the minister reacts with that, he can be in a conflict situation. The municipality passes a bylaw opposed to what you want in here, the minister says, "Well, I'm on the side with the developer," boy, oh boy, I don't think I need to draw any pictures for you. You can really end up in a heck of a lot of hot water over this. I would warn the government that this is not a good idea and you should hold this off until you do the Development Charges Act.

Mr Murdoch: Put it under advisement.

The Chair: Further discussion?

Mr Bisson: Well, Bill's got it under advisement.

The Chair: Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Ms Churley: I voted against.

The Chair: Yes. Is it the pleasure of the committee that section 49, as amended, carry? All those in favour? Opposed? Section 49, as amended, carries.

Section 50.

Mr Hardeman: I move that subsection 5(1) of the Development Charges Act, as set out in section 50 of the bill, be struck out and the following substituted:

"Effective date

"(1) A development charge bylaw approved by the minister of Municipal Affairs and Housing takes effect as of the later of,

"(a) the date on which the bylaw was passed; and

"(b) such other date as may be specified in the bylaw."

This motion is necessary to ensure that municipalities are not prohibited from collecting development charges between the time they pass the bylaw and the date upon which the minister approves the bylaw.

The Chair: Any discussion?

Mr Bisson: I'm not going to belittle the other point, but I'd only say on this, on the one hand you're saying as a government you want to put the power in the hands of the municipalities that do planning and leave them to do their jobs, but one of the ways they can do that, quite frankly, is how they levy fees on development charges and you're taking that away from them. So you're doing quite the opposite of what you're trying to accomplish generally in the bill.

Mr Bradley: Again, by limiting their ability, unfettered, to collect development charges or increase development charges, you're going to have more ill-advised developments.

I want to use an example that I share with people, and it annoys people locally perhaps from time to time, but I look in the middle of Beamsville and they've got subdivisions in the middle of Beamsville, if you can believe it. Beamsville is a small town, rural area, and the people moving in, I would bet, by and large, have nothing to do with Beamsville. There's not a new factory that went into Beamsville. There's not a new institutional development in Beamsville. They're building the houses for people who work in Toronto, or perhaps Hamilton, but more likely Toronto and the greater Toronto area.

So the Lincoln County Board of Education has pressure from people in the subdivision adjacent to increase the size of the school. They wouldn't have that pressure to increase the size of Senator Gibson school if it weren't for the fact that Beamsville is building houses for people who work in Toronto. There is no benefit to the community, outside of the short-term benefit, of the building that takes place, and that is a benefit, but beyond that there's not a benefit to the municipality, and they can't even recover it in future developments through development charges if the minister interferes and says, "You can't have these development charges," or "You're charging too much," or "There's something wrong with the way you did it."

So the municipality, in this case the taxpayers of Lincoln county, which exists for the purpose of education only, Lincoln county has to pick up the tab or there's just no increase in the size of the building and it certainly does, based on the number of people around, justify an increase in the size. When the last government was in power, they were pressuring the local MPP, and then they called me out because I was an opposition person then, and I have to tour the school and look at it and say, "Yes, indeed, this is so and I will speak to the government as well." So what happens is there's no real benefit.

Now, Mr Conway made reference to a document I made reference to by Dr Joseph Kushner—I don't know if he has it at hand—who is an economist at Brock University, a professor of economics. Far from a raving Liberal is Dr Kushner, certainly a small-c conservative, and when I dare to mention his name in the record of the Ontario Legislature as a person from whom I would take economics advice, he would deny me thrice, because he's that conservative and would feel I might be more inclined to spend slightly more money than he thinks government should.

But his paper, which is a technical type of economics paper, clearly demonstrates the cost of residential development to a community, and all these local politicians—not all of them, of course—who say, "We have to grow and expand and bring in new assessment and my city isn't great unless it's getting bigger every year," you find out that they are not benefiting from it, that in fact in this case, the people who work in Toronto may benefit from it. Those people may benefit, but the existing people in that community do not benefit from being a bedroom community.

Now, how does this relate back to the matter at hand, you say? The parliamentary assistant was wondering how I'd relate it back. It gets back to the prohibition, or the potential prohibition, on the part of the minister of a

development charge to be imposed by a municipality, and that is why I think this aspect of this bill is wrongheaded and caters to the development industry.

1430

Mr Conway: I just want to follow up on that example that Mr Bradley used about Beamsville.

Mr Murdoch: Don't use it, use another one.

Mr Conway: I don't want to be repetitive here.

Mr Murdoch: I know. That's what you are.

Laughter.

Mr Conway: Well, you laugh. You laugh, but, you know, any one of you could be a minister some day soon, and what I want to know—you see, I want some assurance from our pal Ernie that he's not exposing—

Interjection.

Mr Conway: Oh, I'm deadly serious. I'm deadly serious, because Bradley's example's a good example.

Listen, I want to be very fair to developers—very fair. I'm not here to be anti-development. But this is all about who pays. Now, we all represent shareholders who have said: "We are up to here. We're not paying any more. We're paying a lot less." That's I think a consensus to which most of us now subscribe. Now, it's one thing to say it. We just have to be able to act on it.

You have a colleague. He's the Minister of Education. He ought to be here for this, because if I were that minister, I'd want to make bloody sure that you're not doing something here that's going to put me in the Beamsville squeeze, or in the Cumberland squeeze, southeastern Ottawa, because Bradley's absolutely right. Once you allow these developments, and if your basic policy is that we want a pay-as-you-go development, meaning you are going to strip out provincial subsidies to a substantial extent, I just want to have some confidence that you, as part of the collective provincial government—for the moment I'm going to forget about the local government. As I said to you before, I haven't served on a local government, but I'd be awfully tempted, if I thought that you had, in this new environment, set me up for some costs, I think I'd be inclined to do one of two things: Say, "Here, Ernie, either you run this or I am opting out of some mandatory sanction of provincial policy X, Y or Z, because I'm not paying. I'm simply not going to go back to my taxpayers and say, 'Well, you've got a big bill here.' It's a bill that is consequent upon some decisions taken a few months ago or a couple of years ago." As the local reeve or the local alderman, as the local mayor, I'd be really inclined in the new world order to say, "I'm not paying and I'm not paying."

Back to my main point. I don't know how well you know, for example, some of the other capital grants plans of your own government. Now, they may be changing, and that might be a useful thing. Just as you're going to change the Development Charges Act, you might very well—it would be interesting, for example, since schools are often a flashpoint, and the example mentioned here in Beamsville speaks to that, it may very well be that you want to get up and announce on behalf of your government, "We have no capital dollars to commit to anything for five years," and just tell everybody that, including developers. "Just don't petition Frank Sheehan or Froese or any of these people, because, in all fairness, they have

no money. There isn't any money in that account and won't be for a period of five to 10 years." We ought not to mislead people.

I'd just like some comment from you as to what kind of comfort you would be willing to provide your own colleagues in the provincial government that you're not setting them up, inadvertently or otherwise, for some bills of a significant kind that will be triggered by some of these initiatives that this bill contains, including the one that we're speaking to in this amendment.

Mr Hardeman: First of all, I want to say to Mr Conway that the education development charges are not affected by this legislation. They are in place as they were prior to Bill 20. It only affects the municipal part of the development charges.

I also want to point out that the amendment that we're presently speaking to is in fact the amendment to allow a development charge bylaw that's passed by a municipality to become effective the day it passes it. If at a subsequent date it is approved by the minister under the present Development Charges Act, the bylaw comes into effect the day of its passing. The municipality can then start charging development charges.

Under Bill 20, those development charge bylaws that require the development charges to be increased require ministerial approval, so they would not, unless approved in Bill 20, come into effect until the day of the approval of that bylaw by the minister. In effect, it would deprive a municipality of collecting development charges between the time that it passed the bylaw and the time that the minister approved it. This amendment is to deal with that time frame, that development charges will not be prohibited during the time that the bylaw is in transition between the municipality and the minister's office.

Mr Conway: I understand that. My point is that when you take this amendment, together with some of the others—I'm speaking to the basic policy question here, and I have to take what you tell me as government policy. I just raise the concern, because I think we can pretty well anticipate the results of the development charges review. I don't think one would have to be Einstein to anticipate what's coming there. All I'm saying is that, as a member of the provincial Legislature, I do not want to be voting for appropriations that were part of developments that you're now asking me to subsidize, and particularly subsidize after the fact, either as a citizen or as a local municipality.

Mr Hardeman: I would just like to add that I would not presume to know the results of review of the Development Charges Act before it is completed. I'm not sure that I could guess that today. I would hope that the review will come out with a compromise that everyone would like.

The Chair: Any further discussion? Seeing none, I'll put the question.

All those in favour of the amendment? Contrary? Amendment carries.

Is it the pleasure of the committee that section 50, as amended, carries? All in favour? Contrary? Section 50, as amended, carries.

Section 51: Any comments, suggestions or amendments?

Mr Bradley: I recommend that the members of the committee vote against section 51 of the bill.

The Chair: Thank you, Mr Bradley. If there's no further discussion, I'll put the question. Is it the pleasure of the committee that section 51 carries? All in favour?

Mrs Barbara Fisher (Bruce): What is the question?

The Chair: Section 51, are you in favour of it carrying?

Interjection.

The Chair: Well, she asked what the question was.

All those in favour that section 51 carries? Contrary?

Mr Bisson: I don't think Dr Galt voted.

Mr Doug Galt (Northumberland): No, I did earlier, at the first request.

The Chair: Section 51 carries. Section 52.

Mr Hardeman: I move that subsection 52(1) of the bill be amended by adding the following subsection to section 7 of the Development Charges Act:

"Effective date

"(1.3) An amendment approved by the minister takes effect as of the later of,

"(a) the date on which the amendment was passed; and

"(b) such other date as may be specified in the amendment."

The Chair: Seeing no discussion, all those in favour of the amendment? Mr Smith, all those in favour of the amendment? Contrary? Amendment carries.

Any further discussion on section 52?

Mr Bradley: Again, I recommend we vote against it.

The Chair: Is it the pleasure of the committee that section 52, as amended, carries? All those in favour? Contrary? Section 52, as amended, carries.

Section 53: Any further discussion? All those in favour of section 53 carrying? Contrary? Section 53 carries.

Section 54: Is it the pleasure of the committee that section 54 carries? All in favour? Contrary? Section 54 carries.

Section 55: Is it the pleasure of the committee that section 55 carries? All in favour? Contrary? Section 55 carries.

1440

Mr Bradley: I think the Chair is prompting Conservative members to vote.

The Chair: No, I am informed by the clerk that there is not the option of not voting in committee.

Mr Bradley: I think I heard about that once, yes; not voting, that option.

The Chair: Section 56.

Ms Churley: Same vote.

Mr Hardeman: Mr Chairman, not to go around and presume how people are going to vote, I don't know about the other members of the committee, but this government member is going to vote against this section.

Mr Bisson: You're actually going to vote against 56?

Mr Hardeman: Section 56. Mr Chairman, if I might, the amendment in fact removes a section that should be removed because of the changes in the minor variance process. We apologize. The government did not catch that one as they were going through the bill in the change for the minor variance. We commend the Liberal Party for bringing that to our attention and we will support your amendment to strike that section.

Mr Bisson: Just for the record, it's not an amendment. We were only recommending that you vote against.

Mr Hardeman: And we will take that recommendation.

The Chair: Any further discussion? Is it the favour of the committee that section 56 carries? All in favour?

Interjections.

The Chair: If we're free of distractions, all those in favour of this section? Contrary? The section is defeated. Section 57.

Mr Hardeman: I move that section 57 of the bill be struck out and the following substituted:

"Transition

"57. If a person or organization appeals a development charge bylaw passed on or before November 15, 1995, or an amendment passed on or before that date to such a bylaw, the appeal shall be determined in accordance with the law and the procedures of the municipal board as they existed on November 15, 1995. Subsections 4(3) to (12) and section 5 of the Development Charges Act, as they existed on November 15, 1995, continue to apply with respect to the matter being appealed and the decision of the municipal board."

Mr Chairman, it is appropriate for all the appeal rights regarding development charges passed prior to November 16 to come under the authority of the Development Charges Act legislation and not the authority of Bill 20. I believe they were passed at that time and appeals should proceed under the law of the day.

Mr Bradley: If I were, again—and I'm not—as suspicious perhaps as the member for Etobicoke West of matters that governments are involved in from time to time, I would wonder why—even though there's been an explanation, I would find it at least passing interesting—is that how you say that?—of passing interest that in fact in the case of the illegal apartments, as they were called, apartments in houses, the effective date is when the bill is proclaimed; however, when it comes to the development charges and the developers who are involved in them, it's then November 15, 1995. So it's a different set of rules for those people than it was for the other people.

I would have thought that, to be consistent in the bill, though I've heard the parliamentary assistant make his recommendation and allow his explanation, you would have retained the same thing. In other words, you would not have treated it differently. However, I understand what you've said. I appreciate the explanation that you have given. You've moved the grandparenting—I'm told I'm supposed to say "grandparenting"—

Ms Churley: Yes, thank you.

Mr Bradley: —provisions for basement apartments from November 15, but you've retained November 15 for lot levy charges. I would have thought consistency, at least, if there's any virtue in consistency, would have seen the dates similar for both; that is, the date of the proclamation of the bill.

There are going to be people out there, certainly not I, who would say that this was dictated by the development industry. I wouldn't want to believe that. I would want to believe the parliamentary assistant and his explanation, but I know there will be many people phoning my office tomorrow morning to ask me about this.

The Chair: Any further discussion?

Mr Bisson: Just on the same issue, it seems to me that if a municipality is passing a bylaw having to do with development charges, it does it as per the current law at the time that it's passing the bylaw. To ask that this be treated differently from anything else in this act I think is highly unfair to the municipalities, especially when you say the whole intent of this legislation is to streamline planning and to give power to the municipalities to let them deal with the questions of planning. You're not only taking a grab for power at this point on development charges, to the minister's benefit, but you're also saying it ain't going to be at the time of enactment; it's going to be way back when to November 15, 1995.

The last thing I would say is, my good friend from Etobicoke is here—

Mr Chris Stockwell (Etobicoke West): Like Bill 4, rent control.

Mr Bisson: No. That's exactly what I was going to get at. I remember when our government back in 1991 passed the rent control legislation and we grandfathered—it wouldn't even be grandfathered. We retroactively put in place the limit on rents back, I think, six to eight months. The Conservative Party of the day argued, I remember, on that committee—

Ms Churley: —went wild.

Mr Bisson: Went wild, and Chris Stockwell was a member. I remember at the time, and I think they made the point—

Mr Stockwell: Did you change your mind?

Mr Bisson: I'm just saying maybe we should have. The point I'm trying to get at—

Mr Stockwell: Oh, maybe, yes. Like my aunt; if she had different parts to her, she'd be my uncle.

Mr Bisson: I love you, Chris. The point that I'm trying to make is simply this: The Conservative Party of 1991 was opposed to the whole notion of doing anything in a retroactive manner. I sat on committee and I listened to the member for Etobicoke West, I listened to the now Finance minister and others in the House. I remember the Leader of the Opposition, the now Premier, standing up in the House and saying, "We are opposed to retroactivity and if we were the government we would not do that." Here you are, you're retroactively giving the power to the minister back to November 15, 1995. For the record, that is certainly in stark contrast to what you said in opposition. But that was then, this is now. Right?

Mr Hardeman: To make sure we all understand the amendment that we're speaking to, this applies to a development charge bylaw that was passed prior to this certain date. This amendment will provide the opportunity for those people who objected to that bylaw to be judged, based on the law that prevailed at the time the development charge bylaw was implemented and that was the law in force on that day. It will not be judged based on the amendments we make in Bill 20. This is to provide the—what shall we say?—grandparenting clause for the objectors to the development charge bylaw that was passed prior to November 15.

The Chair: Is there any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Ms Churley: Point of order, Mr Chairman: We have a visitor. Does he have to vote? Is he not considered—

The Chair: No. He's not allowed to vote.

Ms Churley: Can he speak?

Mr Bradley: As Rod Lewis would say, there's a stranger in the house.

The Chair: Any member can speak when in committee, he just can't vote.

Mr Carr: He just came off the picket line.

Mr Stockwell: My arm's tired.

The Chair: Are there any further comments or amendments to section 57? Is it the pleasure of the committee that section 57, as amended, carry? All in favour? Contrary? Section 57, as amended, carried.

Section 58: Comments, suggestions or amendments?

1450

Mr Hardeman: Mr Chairman, if I might, since the opposition parties have both gone through this, I would at this point recommend the government members vote against this section.

Mr Bisson: You almost missed it, you know that. I wasn't saying a word.

The Chair: Is it the pleasure of the committee that section 58 carry? All those in favour? All those opposed? Section 58 fails.

Any comments, discussion or amendments on sections 59 through 70? Seeing none, I'll put the question. Is it the pleasure of the committee that sections 59 through 70 carry? All in favour? Contrary? Sections 59 through 70 carry.

Section 71.

Mr Hardeman: Again I would recommend that the government would vote against this section. Recognizing that the government voted against sections 25 and 26 for the new minor variance provisions, this section is no longer required in the bill.

The Chair: Further discussion?

Mr Bisson: I would only say it seems to me this government is starting to take the form of an opposition party.

Ms Churley: Oh, I wish, I wish.

The Chair: Further discussion? Seeing none, is it the pleasure of the committee that section 71 carry? All in favour? Contrary? Section 71 is defeated.

Section 72. Comments?

Mr Hardeman: This section also applies to the same criteria as section 71 as it related to sections 25 and 26, and I would recommend that the government vote against this section.

The Chair: Further discussion? Is it the pleasure of the committee that section 72 carry? All in favour? Contrary? Section 72 is defeated.

Mr Hardeman: I move that the bill be amended by adding the following section:

"Regional Municipality of Waterloo Act

"72.1 Section 2 of the Regional Municipality of Waterloo Act is amended by adding the following subsections:

"Exception

"(2) The boundary between the city of Cambridge and the township of North Dumfries between,

"(a) the point on the centre line of the road allowance between concessions 9 and 10 (unopened) which is described on reference plan 67R-3098 registered in the land registry office for the registry division of Waterloo South as the southeasterly corner of part 4; and

"(b) the point that is the northeasterly limit of the King's Highway No. 8 as that highway is shown on deposited plan 807 deposited in the land registry office for the registry division of Waterloo South,

"is the line that begins at the centre line of the road allowance between concessions 9 and 10 (unopened) and ends at the northeasterly limit of the King's Highway No 8 as that highway is shown on deposited plan 807 deposited in the land registry office for the registry division of Waterloo South, as shown on plan 67G-984 and plan 67G-983, which plans are registered in the land registry office for the registry division of Waterloo South, and the continuation of the curve on plan 67G-983 across the King's Highway No 8, the curve having a radius of 1002.106 metres.

"Commencement

"(3) Subsection (2) shall be deemed to have come into force on January 1, 1973."

The Chair: Mr Hardeman, that motion is out of order.

Mr Hardeman: Mr Chairman, I would ask for unanimous consent to introduce the motion.

Mr Bradley: Be like the Lieutenant Governor. Just nod.

The Chair: Any further discussion?

Mr Bradley: Yes, the discussion is this. First of all, I want to point out for the government members who are here that this is an example of the opposition being cooperative with the government. I know you think we're always obstinate.

Mr Murdoch: Never obstinate.

Mr Stockwell: Just most of the time.

Mr Bradley: For instance, had this request been made the day after members of the procedural affairs committee had made a certain motion to further harass members of the opposition, it would have been difficult to agree with this, but the parliamentary assistant has been so very cooperative today. Outside of one clash we've had here today, there's been a relatively quiet day, and we are delighted to be able to accommodate what is a reasonable request.

Speaking on the motion itself, however, one of the things I asked was, does this affect farm land, because I am one who believes that we should be retaining as much of the excellent farm land that we have in Ontario for two reasons: one, soil quality, and two, climatic conditions. I have voted over the years to retain as much farm land in Etobicoke West as possible.

But I should point out for members of the committee that the reason I would acquiesce to this is the following: The farm land has already been zoned for subdivisions. That may or may not be something I agree with, but it has been zoned for that purpose and I am not about to go back, having zoned it for that purpose, to say now that it should not be. Second, by ensuring that these lands are part of Cambridge and not of the township, it is likely that there would be more opportunity to confine development to the city and not have that development creeping

out into the township. So I think there is some virtue to that happening. This amendment, as I understand it and as you have explained it, clarifies the southern boundary of Cambridge to ensure that a proposed road and the approved subdivisions are part of Cambridge.

I should also note another reason I think it's reasonable to agree with this motion is that Waterloo region, as independent observers have indicated, has a pretty good record for the protection of prime agricultural land. I think with that in mind, with the planning department there with that reputation and the council, we are prepared to agree to this particular motion and are quite willing to cooperate by having it included as part of this bill.

Ms Churley: I would like to thank Uncle Jim for doing such good homework for us all on this amendment, because it was just presented to us today and we didn't really have much of an opportunity to delve into the background. I'm going to take it on good faith and trust that Jim's staff did good research here.

Mr Stockwell: She might trust your staff.

Ms Churley: Yes, I'm going to trust the staff really; that they did good research here and that there's not something that we don't know lacking from this research and we end up voting for something that we will regret. Could I ask the parliamentary assistant, there are no tricks here, are there? I mean, Mr Bradley is correct, is he?

Mr Stockwell: Talk about a penetrating question.

Ms Churley: Might as well get it on the table.

Mr Stockwell: No tricks here.

Mr Hardeman: I find it somewhat disturbing that I would have to answer such a question so often in one day. No, there is absolutely nothing in this amendment put forward that changes anything as it's on the ground today. As Mr Bradley mentioned, the land that is being referred to is in fact already zoned for the subdivision. A major portion of it is already built on. The problem arose that there was a border that was inadvertently put in the wrong place in 1973 and the—

Ms Churley: In 1973? Who was in government then?

Mr Hardeman: In 1973, when the Regional Municipality of Waterloo Act was put through, it was inadvertently put in the wrong place. That's why it requires retroactivity, because of the fact that the houses are already there and the development has already taken place. We want to thank the opposition parties for unanimous consent to allow us to put this in the bill and clear up this long-standing problem in the region of Waterloo.

1500

The Chair: Further discussion? Seeing none, I'll put the question. Is it the favour of this committee that this amendment pass? All in favour? Contrary? The amendment carries.

Section 73.

Mr Hardeman: I would recommend again that the government vote against section 73. Again it comes for the same reason, because of the changes we made this morning in sections 25 and 26.

The Chair: Further discussion? Is it the pleasure of the committee that section 73 carries? All those in favour? Contrary? Section 73 fails.

Section 74.

Mr Bradley: Do I have an amendment? I do have.

I move that subsection 74(1) of the bill be amended by striking out "on a day to be named by proclamation of the Lieutenant Governor" and substituting "on the day all new policy statements under section 3 are signed by the Lieutenant Governor."

Let me explain why I move this motion. This is an extremely important motion that has really arisen out of many of the submissions which were made to the committee and also a personal view that it is dangerous to pass a bill of this kind until such time as we have seen the policy statements of the government. In fact there are many people who would, perhaps with some justification, contend that the policy statements may even be more important than the bill itself.

Certainly the earlier argument that took place between the opposition and government members over "have regard to" or "be consistent with," those two general wordings, to a certain extent was based on its own merits, but also, if you have in the bill "have regard to," it would be nice to have very specific policy statements. From many of the people I asked about this, whether in committee or otherwise, "Would you prefer to see all of the policy statements completed in their final form before this legislation comes before the House?" the answer would be yes.

I recognize it's unlikely the government is going to do that, so I am suggesting, as the amendment suggests, "on a day to be named by proclamation of the Lieutenant Governor" was what it was going to be, and substituting, "on the day all new policy statements under section 3 are signed by the Lieutenant Governor." In other words, the Lieutenant Governor is involved in it, but it's when he signs the policy statements, not necessarily when the bill passes.

I think the policy statements are going to have significant ramifications for Ontario. The early indications of the contents of those statements tell me that the government wishes to weaken the environmental regulations. When I read various pieces of literature—I read a headline the other day from a newspaper, I think in Wellandport, where one of the government members said that the Niagara Escarpment Commission was as good as gone, or something like that. I wish I had it in front of me—

Ms Churley: Who said that?

Mr Bradley: —but one of the government members said that, a colleague of the member for Grey-Owen Sound, who has never been a fan of the escarpment commission and expressed some similar—

Mr Murdoch: I didn't say that.

Mr Bradley: No, he did not say that. He was reported in the Owen Sound Sun Times rather as saying that the minister told him he would like what she was going to do with the Niagara Escarpment Commission.

Mr Murdoch: That's right.

Mr Bradley: But another member who is in charge of deregulating Ontario made a statement that the Niagara Escarpment Commission was as good as gone or would disappear, some words of that nature.

Mr Murdoch: Music to my ears.

Mr Bradley: Not Dr Galt; I will say it's not Dr Galt. I really believe that you can test the government's

commitment to environmental protection based upon the contents of those statements, and as I've indicated, the early indications are that there is nothing but a weakening of those statements as a choice. I like to see those. I've called for those for many years. Many people of all political stripes have lamented in my own area the loss of prime agricultural land in an area which has both good soils and very favourable climatic conditions. The combination is what is most important there.

Mr Murdoch: You have to be able to make money, though.

Mr Bradley: I agree with the member. The member interjects appropriately that farmers have to be able to make money on it, and I think we all have an obligation to assist them with whatever policies we can to make money in the business of farming. I have always been supportive of that in any way I could be. I don't believe in our area of the province, for instance—I won't get into an argument over other areas—that economic severances provide a long-term answer to the farmers, and really represent death by a thousand cuts for farm land in Niagara region.

When I first came to Toronto as a member of the Legislature eighteen and a half years ago, the amount of farm land in existence then was far greater than now, and now we see Stoney Creek and Grimsby subdivisions—once again not for people working in Grimsby but for people working in Toronto so they become bedroom communities—and all these less than attractive warehouses along the Queen Elizabeth highway where beautiful farm land and farms used to exist.

I think this is a very important motion and I would have hoped the government members would support this motion. They will have their marching orders from the whip, as all government members do in all governments.

Mr Murdoch: Not from the whip. From somebody else.

Mr Bradley: Well, from whomever. From the Premier's office, ultimately; the Premier's office makes this decision. You'll be told how to vote on this and you'll be told to vote against it, which is most unfortunate, because I think some members of the committee, in their heart of hearts, as the former Premier used to say, would probably believe this is a reasonable motion.

I think the only way, in the long term, to meet our environmental challenges is to have strong policy statements. I for one, before I vote finally on this bill, would have liked to see those policy statements in their final form, because I can't believe the government would be unwise enough to approve them in their draft form, as weak as they are at this time.

It is a very fair motion, I think, that I'm putting forward. I hope to see the nod of acquiescence from the parliamentary assistant, though I think the only nod I would see is if he were nodding off at this time, I'm afraid. But where there is life, there is hope, and I now leave it in the hands of the governing authorities of this province.

Mr Bisson: I'm coming at it from a bit of a different perspective. Anybody who presented to this committee on the issue of going to "have regard to" from "be consistent with," whether they were in favour or opposed, all said

the same thing: You have to have clear policy. The people who came in and said they supported the government on moving towards "have regard to" said it is important that the government have clear policy so we know what we need to do to be in compliance with those policies.

I would argue that the Liberal motion would put pressure on the government to make sure they finish the work on the provincial policies. It would give them an incentive to make sure they finish the consultation so that the draft policies we have now are finished, and when the act comes into play you actually have an act as Bill 20 that is in compliance with the new draft policies.

The problem you're going to be into right now is that you will be working with an act that is having regard to policies enacted under Bill 163 that the government says are too onerous. What am I to think as a developer? Am I going to be working with the old policy? Will I be working with your draft policy? Do I work towards what I think might be your policy? You're really leaving the whole question of what policy to work with quite ambiguous. I think it would make a lot of sense for the government to support this motion, because it would keep you consistent with what you're trying to do.

1510

The other argument I would put forward is that in the title of the bill, the government is very clear. They say the act is to promote economic growth and to protect the environment. Well, if you're serious about protecting the environment, why is it that you didn't entrench that in a purpose clause? You didn't, so the New Democratic Party brought forward an amendment that said we wanted a section in the bill that entrenched the title of the bill so that when you're making decisions, you have to take the environment and economic matters as being equal. You rejected that, so we're led to believe you're not very serious about environmental issues as they take precedence over economic issues. In the very least, if you support this motion, you will be sending some message to people out in the environmental community and to people who care about that issue that you're prepared to do a very minimum when it comes to clarifying what should and what shouldn't happen in terms of planning when it comes to environmental issues.

It brings us back to this whole notion of having a Planning Act that really has policies with no teeth. I'm not going to go into that debate again. I think it's sufficient to say that we oppose that. We would rather you stay consistent. I ask the members to reconsider. This motion is not opposite to what you're trying to do in the bill; in fact, I think it would strengthen your bill and would make it look at least as if you're making a serious attempt to clarify things for developers and planners in this province.

Ms Churley: I come at this from a slightly different direction too from both my Liberal and my NDP colleague. I support the resolution, but I don't think it's as significant as either of my colleagues say. What I would have preferred to have seen, as I've stated before, is that if you didn't like the policy statement under Bill 163—leaving aside the guidelines, which I know people mix up with the policy statement. We haven't had a chance to

find out how those policy statements would be applied and whether they would work, and we figured there would have to be some changes, but if you didn't like them, the sensible thing would have been to work on the policy statement, try to reach a broad consensus, do proper consultation with people on all sides of the issue and then determine that it would make sense to support the "be consistent with" policy as opposed to have regard for." My view is this bill does not have any teeth when it comes to the environment anyway, because I feel very strongly that no matter what the policy statement says—it can have fabulous environmental protection policy within it—if nobody has to pay attention to that, that you just have to "have regard to" it and then throw it aside and say, "We looked at it," then it doesn't really have teeth.

I know Mr Bradley, my Liberal colleague, doesn't agree with that. We've had a disagreement.

Mr Bradley: Oh, I agree with that.

Ms Churley: You do agree with that? Oh, it was Mr Conway, that's right. Let me clarify that, because this is on the record. Mr Bradley did support that.

Mr Bradley: I voted for "be consistent with."

Ms Churley: Yes. I believe, however, that Mr Bradley has a little more faith in this government, that if they come up with a strong policy statement it will actually make a difference in the determination of development and sound environmental policies. I don't believe that's going to happen. I'll vote for this, but (a) it's not going to pass and (b), even if it does, I really don't think it's going to solve our problem.

I want to come back to a letter written on January 31, 1996, by Kathleen Cooper from the Canadian Environmental Law Association. If you recall, Mr Chair, you weren't here at that time but the Vice-Chair was in the chair. We got into a bit of a shemozzle over what consultations were done, with whom and when; I know some clarifications were made after. Since then, she wrote a letter, copied to Ms Elliott. She sent it to us, and I want to read something she said. She declines the invitation to be involved with the—let me see, what is it you call the committee that's been put together by Dr Galt to consult on the policy framework? That's what this is in response to.

She says: "As you are aware, CELA has participated in the process of redesigning an improved land use process over the past four years. We have produced many written proposals, worked with hundreds of people and spent thousands of hours in consultations across the province. During this process, many tradeoffs and compromises were made...on both sides. However, having participated in good faith through that long process in an attempt to defend the public interest in environmental protection, we are dismayed at your government's virtual gutting of the Planning Act reforms."

"The draft policy statement similarly represents sweeping roll-backs, preventing a modern approach to planning. Given the evident direction of your government and the extensive materials already provided to the government of Ontario regarding CELA's views on this subject, we do not believe further verbal consultations will be fruitful at this time."

The second page is missing here, but she goes on to say that CELA will participate in written form.

I think that sums it up. What clearly is a problem here is that it's after the fact. You are now consulting with people who were barely consulted, whose views are not represented in this bill. No amendments were accepted today that encompass the environmental concerns. I don't blame Ms Cooper and others for feeling that this policy statement is really not going to be that significant, although I would like to see it improved. I agree that the draft policy statement is not sufficient and is a significant roll-back in environmental protection, and I hope you will look at CELA's written material and take into consideration the views of the environmentalists and make sure it is reflected in the policy statement.

But as I said, I have great fears that no matter how wonderful it looks, it will be so easily disregarded, that if you do come out with an improved environmental protection policy statement that you might be able to hold up and say, "We believe in the environment; look at how good our policy statement is," you'll then proceed to ignore it. I fear that's what is going to happen with this, but I'll support the motion anyway.

Mr Hardeman: I, as a member of the government side, will not be supporting this motion. We think it inappropriate to tie the proclamation day to a different day than the signing, recognizing that all sorts of unforeseen things can happen to processes and policy statements, recognizing that we do have the policy statements in circulation now for public consultation and we have every confidence that will be concluded at the time the bill would receive proclamation.

Having said that, if that should not happen, the present policy statements would be in effect and would govern the planning process as it relates to Bill 20. The policy statements would be the provincial policy statements until they're changed by regulation, so we do not see the need for that change at this time. We think the motion is somewhat ill-conceived.

Mr Bisson: "Ill-conceived" is a bit strong. That you don't agree with it I think would be better.

Mr Hardeman: Yes, I don't agree with the motion.

Mr Bisson: That's better.

1520

The Chair: Further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? I deem the amendment to fail.

Further amendments?

Mr Hardeman: I move that subsection 74(3) of the bill be struck out and the following substituted:

"Royal assent

"(3) Sections 47, 53 to 56 and 60 to 70 come into force on the day this act receives royal assent."

This is an amendment to deal with the Development Charges Act, to make sure they all come into force on the same day.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

I will now put the question on section 74, as amended. Is it the pleasure of the committee that section 74, as amended, carry? All in favour? All those opposed? Section 74, as amended, carries.

Section 75, Ms Churley.

Ms Churley: Is this the last motion of the day?

The Chair: It is the last motion.

Ms Churley: I move that section 75 of the bill be struck out and the following substituted:

"Short title

"75 The short title of this act is the Promotion of Urban Sprawl Act."

You may think this is a bit mischievous, but one could even add to it: the Promotion of Urban Sprawl and Environmental Destruction Act. If somebody wants to make a friendly amendment, I would be happy to accept that.

I'm going to start by talking about the lack of consultation throughout the development of this draft bill, which we know will soon be passed. It became very clear during the process of the public hearings that the people who were listened to and the people who got the changes and practically everything they desired were developers and I guess you could say pro-development municipalities, and everybody else got left out. We heard that time and time again. In fact, I asked specific questions, and it's in the record, to some select developers: "Were you consulted? Are you satisfied with the bill? Were your concerns and desires expressed in the bill?" and everybody I asked on that side said yes. When I asked other people, environmentalists and community groups, both in the environmental areas and the housing areas, they all said no.

This is not a balanced bill. It's very unfair in terms of the consultation. We spent four years in various forums consulting with all the people all over Ontario. Nobody was totally happy on either side. There were compromises made on both sides. Sure, some people weren't happy. That became very clear. A lot of developers weren't happy—not all; there were some in support. The environmentalists made some concessions as well. They were bitterly opposed to some of the changes we made to try to strike a balance, but at the end of the day felt they could live with them and felt that at least they had been consulted with and listened to. I'm very disappointed that you weren't able to incorporate at least some of the issues brought forward by environmentalists. People who have great expertise and have been working in this area for a long time were left out.

During our public hearings, Mr Murdoch said when the Ontario naturalists were here—and he may recall that they gave an excellent brief. They discussed their disappointment at the destruction of the environment part of the bill and made some recommendations. I can't remember the context, but I said something and Mr Murdoch said that during clause-by-clause their brief would be well-used and considered. Remember saying that?

I have this document in front of me, and if we go through it, we see that only one of their concerns—and I didn't hear Mr Murdoch refer to this document in the whole two days of clause-by-clause. In fact, I didn't hear Mr Murdoch say much of anything, to my surprise. All I can conclude is that he's very happy with the bill, and that in itself makes me very nervous.

I have here in front of me today—I wanted to be reminded a little of Mr Murdoch's past and his involvement with severances in Grey county.

Mr Murdoch: You're going to get it all on the record.

Ms Churley: I have a little bit of history in my hands dating back to when Mr Bradley was the Liberal Environment minister.

Mr Bradley: So popular in Grey county, as I recall.

Ms Churley: You were so popular in Grey county. As I was reminded today, he had asked for the Ontario Environmental Assessment Advisory Committee—is that what it's called?

Mr Bradley: Yes. A wonderful group, now disbanded by this government.

Ms Churley: Exactly, now disbanded by this government, and I wonder if Mr Murdoch had a say in that. He had asked that they look into the situation in Grey county and in particular to look at what was happening in the Sydenham Mills investment group, which we know very well was a disaster. The taxpayers ended up spending tons of money, probably millions of dollars, reacting to very bad planning which Mr Murdoch had a big hand in, although I understand he had to declare a conflict and remove himself from that situation.

Mr Murdoch: I did not.

Ms Churley: If he didn't declare a conflict, I know he must have withdrawn from his financial interest, because one way or another he had to step aside from that. It's all documented here. It's very clear, from going through the records, that Mr Murdoch in Grey county was very involved in severances and breaking up farm land to create more and more development. I fear that Mr Murdoch's dreams have practically come true in this bill, which makes me extremely leery of the bill.

When we formed the government in 1990, shortly after that Minister Grier, Minister of the Environment at the time, and Minister Cooke, Minister of Municipal Affairs, were forced—I believe they took a plane into the Grey county area to take a look. They were receiving so many complaints from the community about what was going on that they had to go in there and take a look and declared a provincial interest and forced that municipality for the first time to actually come up with an official plan.

Mr Murdoch: You're not right, Marilyn. You're putting it on the record and you're not right.

Ms Churley: Do they not have an official plan yet?

Mr Murdoch: They had one before that.

Ms Churley: Well, they were forced to redo that official plan. Now, I fear, with this bill we are going to go back to the same kind of devastatingly bad planning that happened in that area before, especially since they just have to "have regard to" provincial policy which we haven't even seen yet.

1530

Now I want to come to the role of the Ministry of the Environment in this whole debate. My colleagues and I asked, for several days during the public hearings, if we could have the Minister of Environment and Energy and the Minister of Natural Resources in here to answer questions and respond to some of the issues we were raising. We were repeatedly voted down by the government members. Dr Galt, who is still here, said that he could and would be representing—I believe that's how he put it—the Minister of Environment, so she did not need to be here. I haven't heard a word from Dr Galt all day, or yesterday.

Our side, both the Liberals and the NDP, have repeatedly brought up problems with the environmental contents or lack thereof in this bill. We haven't heard a peep out of the parliamentary assistant to try to justify or explain; or sometimes, I would expect, given his role and his position, he would have to vote with the opposition in some of these cases. How can he sit there and vote with the government time and time again on amendments and on a bill that is actually going to be very destructive for the environment?

I will end by saying that I think this whole bill should be thrown out. You should start all over again. I know you're not going to do that, because you've listened to your developer friends. They've gotten practically everything they asked for. They're very happy with this bill. Some asked for a little more.

But I can assure you that there is going to be more urban sprawl. Thus my proposed title. Let's call it what it really is here. Let's not pretend, as you have in the title, that this has anything to do with environmental protection. That's such a sham, and people are soon going to realize that. I think we should at least be upfront with the title. You wouldn't accept our amendment earlier on to strengthen the environmental aspects of the bill. There are all kinds of clauses in here that will very definitely contribute to urban sprawl, which we well know will cost more to the taxpayer and is bad for the environment. It might make some quick bucks for a few developers, but down the road our children and our grandchildren and beyond that are going to be paying for the terrible mistakes we make today, all for the sake of some people making—

Interjection.

Ms Churley: I see Dr Galt is now muttering something over there. I hope he was contributing something positive to the debate over here. I believe he said something about fixing the mistakes the last government made. I hope I'm wrong, because I would expect that the parliamentary assistant to the Minister of the Environment would at least have some concerns about—

Mr Bradley: Is there still a Ministry of the Environment?

Ms Churley: There's still a little bit of the ministry over there, although nobody can find the minister herself these days; nobody knows where she is.

This bill guts all the environmental protection. I know the members don't take it seriously, and that upsets me.

Mrs Fisher: You don't know that. You think you know that.

Ms Churley: Well, I'm sitting here watching people laugh as I make these statements. Some of those members are in denial, including Ms Fisher, absolute denial about the realities of the environmental degradation that's going to happen as a result of this bill. Time and time again during the hearings she would say, oh so innocently: "This bill has all kinds of environmental protections in it. We haven't taken a thing out." If you look at the bill, that's not correct, and if she hasn't figured that out by now, there's something wrong.

Mr Chair, I'm really disappointed that we've been reduced to this state in the province of Ontario, this, coupled with a lot of the other environmental protection

deregulation that's going on, for instance, the deep cuts to the conservation authorities and the fact that they can now sell off land; the firing of staff at both the Ministry of Environment and Energy and Natural Resources. The many, many aspects of deregulation that's happening throughout the government are going to cause tremendous harm to the environment.

I will conclude by saying, and mark my words on this, the public cares about environmental protection. Poll after poll shows that. Right now, you don't see it high on the list of things that people are most concerned about. There's this general assumption now that the government is protecting their environment and their health. Even with the Conservatives before you and then with the Liberals and with our government, there was progressively, in some cases slower than others, new and better environmental protection, and that came from the ground up, the environmentalists and the community pushing government, pushing government hard to create better environmental laws.

The over 20, 30 years of environmental protection that's been built up in this province is being wiped out right under our noses. Most of the public aren't aware of what's happening here, but I can guarantee you that when they do find out, there's going to be a price to be paid and you will pay it. You will see that over the term of your government people, as they find out what's happening to environmental protection, will respond swiftly and loudly.

I know that I'm not going to change anybody's mind here today, but I want to say how very disappointed I am that you went ahead and completely gutted environmental protection in this bill.

I see my colleague Mr Bradley looking at the clock here to hopefully time his remarks.

Mr Bradley: Thank you very much for the opportunity to offer some observations, at the conclusion of this bill, on the motion moved by Ms Churley that the short title of this act be referred to as the Promotion of Urban Sprawl Act. There's no question that the bill could have many different names. The last name I would call it would be the name which has been given to the bill, which is "An Act to promote economic growth and protect the environment by streamlining the land use planning and development system through amendments related to planning, development, municipal and heritage matters." I would agree that it is designed to promote economic growth, at least in the short term, so that part of the title I would agree with. I think the better title selection would be the one the member for Riverdale has suggested. They will, no doubt, be tipping the champagne glasses back in the Albany Club, when this bill finally passes, where the developers gather to cheer on those who have done their bidding in the government.

It's most unfortunate that within the government caucus, where I know there must be some dissenting views, those views have not been loud enough or powerful enough to see this bill amended in some ways that I think would be beneficial to the province. I note, not in a personal way but in a lamenting way, the fact that the member for Middlesex, who knows much better than I about planning matters—is a professional planner, is

appropriately educated for that and has the detailed experience—has not had an opportunity to participate in this debate, though I would have benefited immensely from his interventions, particularly in those matters which are technical, perhaps not always the matters that are philosophical, but in many of the practical matters. I lament the fact that through this process, the government has chosen only on a few occasions to make changes to the bill which I believe would be of benefit.

The consultation process is always a controversial one. There are going to be those who say it took too long and those who say it took too short a time. I would say that quite obviously, regardless of who was consulted, the development industry is the clear winner. When they appeared before the committee and we asked them, they were enthusiastic in their support, and I don't blame them for being enthusiastic in their support of this bill; though not entirely supportive, they were enthusiastic in their support.

Those who are in the other aspects of our society were disappointed in certain aspects of the bill, some disappointed in all aspects of the bill. I do not believe that there was a meaningful consultation because what ultimately emerged was a bill that clearly favoured one side in the development debate.

1540

This bill, in my view, provides further opportunities for some of the good old boys to favour their friends and supporters with development and planning decisions at the local level. While the overwhelming majority will not be doing this, it does open the door to those who would see fit to do so. So I can understand the enthusiasm of those who see their own power to favour their friends increased rather significantly.

I think there are several significant points. The heart of the bill revolves around the controversial issue of whether "be consistent with" or "have regard to" shall be included in the bill. Those who are on one side, the pro-development people, are going to agree with "have regard to." I also respect the fact that there are others who aren't necessarily pro-development, as the parliamentary assistant and others have suggested, who believe that "have regard to" allows more flexibility to deal with planning and development matters in areas of the province where there are differences from, say, the major metropolitan centres.

I respect that view, I don't necessarily agree with it. I don't look at it as sinister, but given the preference, I would certainly prefer "be consistent with." I believe that sets out a much clearer policy and I believe in the long run that causes fewer disputes than when you have a clause "have regard to" which is more subject to various interpretations.

I am not satisfied that this bill provides protection for agricultural and environmentally sensitive land. I think there's a major issue in this province about retaining good agricultural land. There isn't much left. They're not making more agricultural land, the last I heard. So what we have is what we have.

There's a combination in southern Ontario that we have both relatively good soils in most places and favourable climatic conditions. You look at Canada and

people say, "Canada is a great country; it's a huge country." Two thirds of Canada is not suitable for growing crops. Two thirds of Canada is not really suitable for agricultural purposes—rural land, perhaps, but not for agricultural purposes, and I'm probably erring on the generous side. It's probably more like a quarter to an eighth of the land in this country that's really suitable for agricultural purposes.

That's why it's important to protect what we have, not only for this generation but for future generations, and to provide competition for those who are outside of our province and trying to sell to our province. It helps in our pricing.

I don't think that this bill promotes the protection of agricultural and environmentally sensitive land as it should. I include in that wetlands, which are so nice to have within various parts of our province.

I am concerned about the aspect of the bill that prohibits the Ministry of Environment and Energy, the Ministry of Natural Resources and the Ministry of Agriculture, Food and Rural Affairs from appealing directly to the OMB; they have to appeal instead to the Ministry of Municipal Affairs and Housing.

Take my word for it, the Ministry of Municipal Affairs and Housing is not primarily concerned with protecting the environment or environmentally sensitive areas or agricultural land. It is to deal with municipalities and it is to produce housing developments. That is what it's there for.

I respect that it has a role to play in government; I respect the people in that ministry. I simply say that it would have been preferable to permit various ministries to look carefully at the plan, consult one another, and if there's not a resolution of the differences between the ministries, have them have an opportunity to make representations by means of an appeal to the Ontario Municipal Board.

It doesn't deal adequately with severances, and this gets into the motion the member has before us, in terms of urban sprawl. I don't believe that you can give out severances like candies in this province and have good planning. I don't think there's a tough enough policy on severances contained in this bill.

I believe that it will be detrimental for the downtown areas of many of our communities. I speak of my own city and I wish our downtown area were much more vibrant than it is now. As long as we have developments on the periphery of the city—commercial and residential and business developments—we're going to see continued deterioration of downtown areas across this province. This bill, instead of protecting against that, instead of trying to reverse that trend, will in fact accentuate that trend.

I do not believe that the cutting of times you have mentioned is reasonable in light of the fact that you are cutting staff. The provincial government, for reasons it deems appropriate—I do not agree with them because I believe that the policies are ill conceived—is making significant, substantial cuts in funding to municipalities, and in its own ministries, to be fair. It seems to me that is going to be reflected in that there are fewer members of staff to deal with the development proposals that come

forward, and yet this bill shortens the length of time these people have to deal with those proposals. That, in my view, means what we're going to have are proposals that don't receive the appropriate amount of scrutiny and analysis by various levels of government, by the planning departments and engineering departments, both municipally and provincially. The staff goes as well for conservation authorities and other agencies, boards and commissions which are involved in commenting.

Lastly, I believe that the development charges change is not a positive change. It reflects the concerns of the development industry, it seems to me, at the very time that you are cutting funding to the municipalities, you are largely doing it to the degree you are and with the speed you are to fulfil a promise to cut taxes, provincial income taxes, which will of course involve the borrowing of over \$20 billion and an additional over \$20 billion added on to the provincial debt load as a result of borrowing that money to give the money back to me and to you. That is what the agenda is all about, and the development charges are only a way that municipalities can have to recover some of the funding they are losing as a result of the drastic cuts in provincial funding.

Though it's not part of the bill—it was an amendment I moved near the end—I believe that it is not useful to have this bill pass in the Legislature before we see the final versions of those policy statements which, by the way, I believe are being weakened rather than strengthened through a less than satisfactory consultation process being undertaken by this government.

I do support this motion because I think the suggested title of this bill is better reflected in the motion of the member for Riverdale than it is in the title that we find on the outside of this bill.

Mr Bisson: This is the last opportunity we're going to have to speak on the contents of this bill, in committee of the whole, anyways; we'll get one more shot at third reading.

For the record in regard to this particular section, I just want to say that it comes back to the argument that the government proposed a bill in this House last fall that has a title that says basically that they want to promote economic growth and they want to protect the environment by streamlining the land use planning system. If your intent is to do that, it seems to me it should be not only in the bill but actually in the title as well.

You're moving forward with the short title of the bill where you're not really putting any kind of emphasis on a balance between protecting the environment and streamlining the planning process for the good of the people. I would say to you simply that the very least you're able to do is to look at your title in order to try to find some way to send a message out there that this government really does believe in protecting the environment and is really not as pro-development as it's made out to be. If you don't do that, I'm led to believe the opposite.

Our motion I think is trying to point out the obvious. This bill, very simply, is a pro-development bill. That's your right. You're the government, you have more seats in the House than we do, but I don't think that makes it right for the development industry and I don't think that makes it right for the people of this province.

1550

What are you doing in this bill? You're going to have policies that you're changing that you're going to weaken when it comes to the standards about how provincial policies are applied in this province. Not only how they are applied, but the content of those policies are going to be weakened. Are we well served by that? I think not.

I would agree with the government that maybe the prior policies under 163 needed to be worked on. They were large; there was 700-some-odd pages of policy that could have been—

Ms Churley: No, no, no. That was the guidelines. That was not the policy statement.

Mr Bisson: Let me finish.

Mr Bradley: There's a squabble going on here.

Mr Bisson: There's a squabble going on between our two colleagues here. But the point I'm getting at is that I'm prepared, as a member of our party, to work with you in order to strengthen the policies so that developers and planners have a clear understanding of what those policies are, so that we really have rules that make some sense to the people out in the development industry but, at the same time, protect our environment. I think we need to keep that in mind.

I would say what both of my colleagues said before: To have policies and not having to be consistent with those policies I think is a wrong way to go. "Having regard to" is really going to mean exactly that; it's going to be raised to the lowest standard of those policies with municipalities across the province of Ontario. It really takes away the balance that you need. I think if anything happened under the previous government in regard to planning, most would agree it was the most extensive consultation process in the history of planning in this province, both under the Sewell commission and the work that was done under Bill 163. And what was that all about?

I just want to go back and read what the order in council basically said when we put forward the Sewell commission:

"The government of Ontario believes that the planning and development process should recognize and support environmental, agricultural and other public interests.

"The government of Ontario believes that an inquiry will provide policy recommendations which will assist the government in making the planning and development process more fair, open and accountable."

I think one thing that you're doing in this is that in some ways you're flying in the face of that. It really smacks this bill that it's going to be a pro-development bill, not one that's going to be fair as to how it treats the environment.

"...to examine the relationship between the public and private interests in land use and development,

"to inquire into, report upon and make recommendations on legislative changes or other actions or both, needed to restore confidence in the integrity of the land use planning system..."

I don't think that you could have integrity when you've got a bill that smacks so strongly of being a pro-development bill. If you want to encourage economic activity, I think there are all kinds of opportunities to do

that, both within the development industry but also within others. I don't see the government on others. Quite frankly, you're cancelling all the economic development programs that we have throughout the province.

I would just say one thing, just a little bit on the side. I remember in the last provincial election, Conservatives in northern Ontario running as candidates. One of the platforms that they ran on was of allowing severances to happen basically at will. I saw that in my riding. I know my colleague from Sudbury East, Shelley Martel, saw that, where they were very well organized in making sure that people got the message that the NDP was against severances of all kinds and the Conservatives would fix this problem by scrapping Bill 163, and they would just allow those severances to happen.

I would say the government didn't do that, thank God, in this bill, because I think allowing that to happen would have been a step in the wrong direction. But I would say that there are people in my riding who are now feeling as if they've been misled. When I was back in the riding last weekend, one of the people that wanted to have a severance done when we were in government was really looking forward to this bill fixing his problem. It did not do that, and he wanted me to bring back to the Legislature his disapproval of what the government's actions are. I don't agree with him. I think that we were right, under the old policies, not to allow that severance. But I would say you can't run an election the way that happened last time, knowing full well that you couldn't keep that campaign promise. There was just no way that you can go to that kind of policy.

The last point I would want to make to members is simply this: We as politicians are viewed by the public in a very negative way. I think over the number of years, people look in at the Legislature and its committees and they say: "Jeez, look at the legislators. Are they really representing our interests or are they representing the interests specifically only of their party? And isn't this really all about partisan politics?" I think what we've seen in this committee over the last couple of days is an unwillingness on the part of the government to allow its members to really contribute to strengthening this bill.

I know there are people on the other side, on the government side, who really do care about this issue. I know Mr Galt and even Mr Murdoch, although we disagree on content, have a keen interest in this issue and want to make sure that their views are seen. I know Mr Carr, Mr Baird and Mrs Fisher probably feel the same way. But I really have to ask the question: What's the use of going through a committee process if even the government members aren't prepared—or aren't allowed, I should say; I think they're prepared—I would say aren't allowed to be able to comment and bring forward their points of view?

The point is simply this: If we're going to have the confidence of the people when it comes to being their representatives, I think it means to say that we have to be seen on all sides of the House as trying to bring forward those issues that we say are important to us and our constituents. I remember sitting on committee through the province of Ontario on this bill where government members said, "I thank you very much for your presenta-

tion and I'm going to make sure that this issue is brought back to the Legislature when we deal with it in committee of the whole and that we take that into account." Not one of those presentations were talked about by the government members, and I just warn you, I don't think that's a good practice to get into.

Our government tried to do that to us as backbenchers in the first year that we were elected as a government and I can tell you, we had one heck of a revolt in our caucus because we said, "We ain't going to come here and be seen as being bumps on a log, because we have a responsibility to represent our constituents." We went through an entire process in our caucus that really opened up the legislative process, both in caucus but I would also say within the House and committee, to allow members to have a bigger role, to be able to espouse the views of their community or themselves in order to be able to have a real say in committee.

The other thing I would say is that, also in my experience on committee of the whole before, this is the first time I have come to a committee-of-the-whole meeting since I've been elected in this House where opposition amendments have not been, quite frankly, taken seriously. On all other committees that I've sat on, there has been an attempt by government members to look at what the opposition was bringing forward and as long as it wasn't something that we disagreed with philosophically—because I accept, "have regard to" is something that you believe in and you're not going to take that from us. I understand that. But when we brought forward ideas in regard to some of the problems we see with your bill when it comes to practical matters, there wasn't an attempt to deal with that and I would just warn members, that's not a good practice.

I recognize that some of you are new to this place and I don't say that in disrespect. We all learn as we go along and I haven't been here all that long either. Six years in this place ain't a long time. But in the six years that I've been here I've understood that you need to take seriously the comments of both people in opposition and government to make sure that we make the legislative process count for something and that we strengthen legislation through the process of both the committee and the Legislature. I would just ask you to go back to your caucus to speak in caucus about what your roles are in committee because I think it is very important.

Mr Hodgson has sat on committee with me before. Mr Stockwell who sat on committee, Mr Jackson who sat on committee on a number of different issues and bills that we dealt with as government, brought forward suggestions to our government where we, on issues of ideology—no, we didn't move—but when they were able to point out problems with our legislation in regard to its practicality, we accepted the amendments of the opposition and were able to deal with that so that we were able to strengthen our bills. I didn't see that as a weakness on the part of our government; I saw that as a strength, of being able to accept that legislative counsel doesn't always get it right. Let's get this straight: It was not Ernie and it was not Al who sat down and drafted this bill. The government gave direction; it's legislative counsel that put it together. Even legislative counsel at times, or the

lawyers from the ministry, do make mistakes when it comes to practicalities. So I would say, go back and speak to your caucus about how your roles are on committee because I really don't think that we've been well served through this whole process.

I would just say, in regard to the title of the bill, I will be supporting the motion that my colleague from Riverdale put forward on the basis that I really do believe this is a pro-development bill and has nothing to do with environmental protection but has everything to do with urban sprawl.

Ms Churley: I want to close on saying something in defence of developers, actually. Developers are a special-interest group and they have a right to represent their constituency and their interests, and that's fine. I made that clear to some of the developers who came and supported this bill and had a lot of input in the bill. So my beef isn't with the developers. My beef is with the government, in that it is the government's responsibility to listen to and balance the interests of all so-called special interests in our society.

The problem is that this government has chosen, and it's very clear in this bill, to listen to just, on the whole, one special-interest group. Therefore, there is a lack of balance in the bill. I think that it would do us all well in the future, as we look at legislation, to agree that if we're going to call a few groups whom you don't agree with "special interests"—like environmentalists, and they were referred to on several occasions by some, certainly not all sectors, as "special interests" and therefore to be dismissed, not taken seriously.

I know lots of developers and certain other interests don't like to—bankers, whatever—be referred to as special interests. Somehow there seems to be this idea that: "Gee, golly, no, they're not special interests. They have the whole of society at heart. What's good for them is good for all of us." Unfortunately, a bit of that comes through from the so-called developer community. But it's up to the government to say: "No. You are a special-interest group, and we're going to balance your rights and your needs with the rights and needs of society as a whole."

I believe that that's what went wrong. Fundamentally what went wrong with this bill—and fundamentally that the Minister of Environment and Energy, the Minister of

Natural Resources and the Minister of Agriculture, Food and Rural Affairs were left out of this process. They're not here. They're not speaking. They're not in this bill. And this bill has much more to do with environmental protection in many ways than development. It's very sad. I hope that this government sees it as a lesson in the future to listen to everybody and balance everybody's rights.

The Chair: Any further discussion? Seeing no further discussion, I'll put the question.

Mr Bisson: Recorded vote.

Ayes

Bisson, Bradley, Churley, Conway.

Nays

Carr, Fisher, Galt, Hardeman, Murdoch, Newman, Smith.

The Chair: I deem the amendment to fail.

On to the last few orders of business. Section 75: Is it the pleasure of the committee that section 75, the short title of the bill, carry? All those in favour? Contrary? Section 75 carries.

Shall the long title of the bill carry? All those in favour? Contrary? The long title of the bill is carried.

Shall Bill 20, as amended, carry?

Mr Bisson: Recorded vote.

Ayes

Carr, Fisher, Galt, Hardeman, Murdoch, Newman, Smith.

Nays

Bisson, Bradley, Churley, Conway.

The Chair: I deem Bill 20 to carry.

Shall Bill 20, as amended, be reported to the House? All those in favour? Contrary? I deem Bill 20, as amended, will be reported to the House.

With that, I'd like to thank you all for your active participation in this. The committee stands adjourned till the call of the Chair.

The committee adjourned at 1604.

CONTENTS

Thursday 29 February 1996

Land Use Planning and Protection Act, 1995, Bill 20, *Mr Leach* / *Loi de 1995 sur la protection et l'aménagement de territoire*, projet de loi 20, *M Leach* R-735

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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*Murdoch, Bill (Grey-Owen Sound PC)

Ouellette, Jerry J. (Oshawa PC)

Tascona, Joseph (Simcoe Centre / -Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Bisson, Gilles (Cochrane South / -Sud ND) for Mr Christopherson

Bradley, James (St Catharines L) for Mr Duncan

Carr, Gary (Oakville South / -Sud PC) for Mr Maves

Conway, Sean (Renfrew North / -Nord L) for Mr Hoy

Galt, Doug (Northumberland PC) for Mr Tascona

Hardeman, Ernie (Oxford PC) for Mr Carroll

Newman, Dan (Scarborough Centre / -Centre PC) for Mr Baird

Smith, Bruce (Middlesex PC) for Mr Chudleigh

Also taking part / Autres participants et participantes:

Stockwell, Chris (Etobicoke West / -Ouest PC)

Elaine Ross, legal services branch—municipal affairs, Ministry of the Attorney General

Clerk / Greffier: Douglas Arnott

Staff / Personnel: Laura Hopkins, legislative counsel

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R-18

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First Session, 36th Parliament

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Première session, 36^e législature

Official Report of Debates (Hansard)

Monday 13 May 1996

Journal des débats (Hansard)

Lundi 13 mai 1996



Standing committee on resources development

Comité permanent du développement des ressources

**Ontario Highway Transport Board and
Public Vehicles Amendment Act, 1996**

**Loi de 1996 modifiant la Loi
sur la Commission des transports
routiers de l'Ontario et la Loi sur
les véhicules de transport en commun**

Chair: Steve Gilchrist
Clerk: Douglas Arnott

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 13 May 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 13 mai 1996

*The committee met at 1532 in committee room 1.*ONTARIO HIGHWAY TRANSPORT BOARD
AND PUBLIC VEHICLES AMENDMENT ACT, 1996
LOI DE 1996 MODIFIANT LA LOI
SUR LA COMMISSION
DES TRANSPORTS ROUTIERS DE L'ONTARIO
ET LA LOI SUR LES VÉHICULES
DE TRANSPORT EN COMMUN

Consideration of Bill 39, An Act to amend the Ontario Highway Transport Board Act and the Public Vehicles Act and to make consequential changes to certain other Acts / Projet de loi 39, Loi modifiant la Loi sur la Commission des transports routiers de l'Ontario et la Loi sur les véhicules de transport en commun et apportant des modifications corrélatives à certaines autres lois.

The Chair (Mr Steve Gilchrist): Good afternoon, ladies and gentlemen. Our timing today will be 20 minutes per deputation, but before that, we're going to be hearing from the three parties. We'll have opening comments from the government and then 10-minute responses from the official opposition and the third party.

Even before that, the clerk reminds me, the first order of business will be to approve the subcommittee report. You all have copies on your desks. Any comments arising from the subcommittee report? Seeing none, I look for a motion to adopt. Mr Carroll so moves.

All in favour of the adoption of the subcommittee report? Contrary? It's carried.

Moving right along, I'll ask for opening comments from the government.

MINISTRY OF TRANSPORTATION

Mr Jerry J. Ouellette (Oshawa): Before we get started today, I want to say a few words about this government's commitment to deregulating the intercity bus industry. We believe the travelling public will be better served by an industry free from economic regulations. It will create a more competitive market in which entrepreneurs can meet passenger needs in new and innovative ways.

However, it became clear after second reading of this bill that there are several issues surrounding intercity bus deregulation that need to be clarified. I want to do that today.

First of all, this legislation does not in itself deregulate the intercity bus industry. Bill 39 creates an interim system to help us move towards deregulation. It also gives the industry time to adjust to the transition.

Another important issue I'd like to address is public safety. I assure you that the safety of the travelling public

is this government's priority and we will take all steps necessary to ensure the industry is safe.

The increased competition that comes with freer access to the marketplace will not compromise public safety. Deregulation will only affect the economic aspects of the industry. Current safety regulations will continue to apply. However, later this month we plan to introduce legislation that will impose harsher penalties on companies that don't meet safety standards. It will include dramatic increases in the maximum fines for safety offences.

Another part of this legislation will clear the way for a demerit point system for commercial drivers who violate industry-related safety laws. This system will allow us to monitor the safety practices of professional drivers.

On top of these measures, the Ministry of Transportation will launch its new safety rating system for truck and bus operators by next year. The system rates a truck or bus company's safety performance on the road and its overall corporate safety practices and policies.

Another issue that came up in the House had to do with service in small, rural and remote communities. The current regulated system does not guarantee service to small-town Ontario. In fact, in the past 15 years, more than 400 communities across Ontario lost their bus service. By removing restrictions on the industry, we can only improve the chances for these communities to get the services they need. When the demand is there, market forces will encourage the private sector to create more local bus services.

In fact, I think people who live in small towns across Ontario will find that their local bus service is an important link in the chain of intercity travel. After all, passengers from smaller towns often transfer to larger bus services to get to a central location. Without these so-called feeder services, the larger bus companies would probably not have enough passengers.

However, if some bus companies choose to withdraw their services from communities during the next two years, this government will require that they give us and the community fair warning. They will have to give 90 days' notice instead of the current 10 days. Those planning to cut a bus service by more than 25% must give 30 days' notice. That's three times the current required length.

A carrier company's rating — either satisfactory, conditional or unsatisfactory — will be available to the public, including banks, insurance companies and customers who do business with the industry. We believe this system will encourage bus and truck operators to follow good safety practices.

During the interim stage, new bus operators will have to demonstrate that they know their responsibilities for highway safety. They will also have to indicate how they will ensure their vehicles operate safely on the highway. They can expect MTO enforcement officers to audit their business within six months of starting up their service.

On top of this, we are increasing insurance requirements for bus operators to bring them in line with today's operating environment. This will discourage fly-by-nighters, those companies hoping to make some quick cash without giving the appropriate attention to safety. Finally, this government supports a national review of bus safety to determine if special bus safety measures should be in place right across Canada.

Plus, we will require bus companies to continue to provide service until a replacement is found or until the notice period expires, whichever comes first. During that time, and in cases of serious hardship, the company must work with the local community and other interested groups in a reasonable effort to find a replacement.

I am confident that Ontario's towns and villages will actively encourage local entrepreneurs to provide the transportation services needed by their fellow residents. In this respect, deregulation should give smaller companies an opportunity to get started.

During the debate in the House, several members accused the government of abandoning northern Ontario. This government is committed to ensuring a safe, efficient and healthy bus industry right across the province, including the north. There are entrepreneurs in northern Ontario that are ready, willing and able to take on the challenge of a bus industry without regulations. There are also existing operators that are interested in expanding their service in the north, that are not allowed to under the current system.

I understand that many of you are concerned about the potential for unfair competition from neighbouring provinces. During the next 20 months leading up to deregulation in Ontario, we will pressure the federal government to follow through with nationwide deregulation. The federal government is in the best position to pursue this since it has jurisdiction over the majority of bus companies in Canada. The current interprovincial and international trade agreements tend to support deregulation. It is only a matter of time before it extends to the entire North American intercity bus industry.

Both the United States and the UK removed economic restrictions on their intercity bus industry more than 10 years ago. A Canadian study found that the number of US bus companies almost tripled seven years after deregulation in the US. Although some studies show that US deregulation has had some negative results, it is very likely that those same scenarios would have occurred even if regulations had remained in place.

In the UK, the intercity bus industry has been deregulated since 1980. Deregulation in the UK has reduced fares and improved the quality and quantity of service. Following deregulation, ridership also increased by some 14% after a decade of decline. As with the US experience, various negative results in the UK can be attributed to a general decline in the industry that existed in the years prior to removing economic regulations. However,

the UK experience is difficult to sort out since they deregulated the intercity bus industry and local transit at the same time and also introduced a major bus privatization initiative.

1540

Several studies on this subject also recommended relaxing the regulations on the bus industry. The most noted, the 1992 Royal Commission on National Passenger Transportation, reinforces this government's view that deregulation will not necessarily lead to operators abandoning feeder routes. The study found that if some operators did so, they could undermine their competitive position in the market as a whole. The royal commission also found that deregulation would result in a somewhat smaller but equally regional network, with a dominant carrier running a network of local feeder routes. It suggested that specialized bus services would emerge, some in the form of commuter services, others providing intraregional bus services.

I'd like to make one final point. Intercity bus operators can appeal decisions made by the Ontario Highway Transport Board. If an operator feels a board decision is unfair or beyond its jurisdiction, he or she can request a review through the courts.

Ladies and gentlemen, I assure you that a deregulated intercity bus industry will meet the needs of the travelling public. It will encourage innovation and attract entrepreneurs. It will also be safe, efficient and profitable.

This legislation will ease the transition to deregulation. It will provide some stability for the industry and it will help operators prepare for a more competitive marketplace.

The Chair: Thank you, Mr Ouellette. First off for responses, the official opposition.

Mr Mike Colle (Oakwood): The final comment really puzzles me. It's typical of this whole act. I know in the explanatory notes in Bill 39 it says: "The decisions of the board are final. Appeals to Divisional Court, petitions to cabinet and stated cases to Divisional Court are no longer available." This is the thing that perplexes me about the approach the government takes to this act. Is this therefore a mistake? Is it a misprint? It just contradicts exactly what you said about a minute ago. I wonder if the parliamentary assistant could refer to that later on, whether we should disregard this in the preamble.

In terms of the process in this bill, there's a constant reference to what will happen, what they're confident will happen with this act. The real flaw is that there's been no business case analysis on what the impacts would be. The government has failed to do that. I guess that's the most surprising thing. If you're going to affect thousands of people who are passengers, hundreds of companies and thousands of workers in an industry that affects so many communities in Ontario, why wouldn't the government undertake to do a business case analysis on the impact the legislation would have on the providers, on the people in the business, the communities and the riders? That should have been done so that we could get at least an independent perspective on what would happen to this industry, what would happen to the passengers and what would happen to the communities.

To go ahead and do this without that impact analysis in the first place is really shortsighted. I think it leads to a lot of confusion, and that is what has happened with this bill. People don't really know.

For instance, they refer to the fact that 400 communities in Ontario over the last 15 years or so have lost bus routes. The government has not brought forward an analysis of that. In other words, why did these 400 communities lose service? I'm sure in some cases it's got a direct relationship with the present state of affairs of bus regulation in Ontario, but there are also all kinds of other variables and mitigating circumstances which caused those communities to lose those bus routes that had nothing to do with government and bus regulation or deregulation. All we keep hearing from the government on this issue is, "Oh, 400 lost it," with no analysis of why they lost it.

The same thing in the United States. On the opposite end of the spectrum, when deregulation took place in the United States under Ronald Reagan, we know that 5,000 communities in the United States lost bus routes. I guess it would be easy for the opposition to say, "They lost it because of deregulation." Again, I think that would be shortsighted. What would be interesting to see is an analysis of what happened in the United States as a result of deregulation.

We talked about the UK example. Again, the UK example is quite complex, because there are a lot of factors that caused different changes as a result of deregulation in the United Kingdom. But again, it would be very valuable, I think, to have an analysis of that and relate it to the Ontario experience.

That is not before us. All we have are anecdotal references by the government. In fact, during the discussions in the House, they never even referred to the UK or the American examples. Now, because we've asked that question, they've finally referred to and acknowledged the fact that deregulation has had a negative effect to a certain extent in the UK and it's had a negative effect to a certain extent in the United States.

Again, it's not to say that all the good and bad in terms of bus services and the infrastructure have to do with deregulation or regulation, but I think it behooves the government to put before us a business plan, a business analysis on why deregulation is good, and give us the breakdown on what effect it would have on the industry. That has not been done. There have been discussions, I'm sure, with the industry. There has been very little comprehensive analysis, though, and that is why I think the critical thing we're saying from our side is that's the missing ingredient in this whole process.

Before you proceed, there should be a breakdown on the impact these changes will have. It's not good enough to say, "We're going to put in this measure, this Bill 39, and then we'll look at it over the next 20 months." I think this process should have started seven or eight months ago, where there was time enough for an independent expert, someone the government would have faith in, to do a comprehensive analysis. What we're really looking at is an infrastructure, we're looking at an industry, we're looking at a vital link that many small towns and communities have, and we're looking at a very changing marketplace.

In terms of the reference to competition, I would say the most troublesome thing of all is what's going to happen with the Quebec competition. It's fine to say, "We're going to urge the federal government to do something about deregulation in the rest of Canada," but the truth of the matter is, we've had very little success in effecting change in Quebec. Go across to Ottawa, sit on Booth Street in Ottawa, and you'll see every morning thousands of Quebec workers coming across to work in Ottawa. Our Ontario Ottawa workers can't go across to the other side. No matter how much we've asked them to amend the situation, the Quebec government is not being very cooperative. I don't think it's good enough to say, "We are going to hope and pray and we are going to ask the federal government to do something about it," when that is a very real threat to the viability of the industry — never mind what it does in terms of ridership across the province.

The government has really no answer on how it's going to mitigate that threat of Quebec or Manitoba perhaps poaching or infringing upon an industry which right now, as a result of this and as a result of total deregulation, might be on an unequal footing with its competition in Quebec. There are no protections in place, and I say that is very worrisome in terms of what it might do to an industry that is a very tenuous industry when you consider the competition it has in this province and the geography that poses a challenge in this province. Those are realities that face us in this province.

There's no denying that this is a very perplexing challenge. It's not an easy thing to sort out. But I think if you want to do it in a comprehensive way, you do it in a way that looks at what the history has been in the UK, in the US, and you bring in all the players, all the stakeholders, including the riders, including the small-town mayors and reeves, and ask them what they think the impact of deregulation would be on their communities, and ask certainly the people who have put their capital investment into these businesses, these industries, what they think the impact would be. I think that has not been done in a comprehensive, systematic way and I think it's good business to do it that way. That hasn't been done. We're putting the cart before the horse here and I don't think it really helps create a climate of confidence as you go ahead into this deregulation.

1550

The Chair: Moving to the third party.

Mr Gilles Pouliot (Lake Nipigon): We find ourselves in the midst of what is for the government of the day, the régime du jour, an ideological bend, if you wish. They, on Bill 39, spoke with candour, certainly not a departure from the present style, form, ideology of today's government. We of the New Democratic Party, a year ago we were the government. We served the full four years and nine months. We came close to the sunset, the limitation, of the Constitution, of course. The reason I say this is that we too had ample time and opportunity to look at what is in front of us and, make no mistake about it, interim is a de facto to what is about to happen.

Our position has been one of consultation, of equilibrium and, we feel, of balance. We ask ourselves first and foremost who would benefit; who would lose; does the

legislation need change? We conclude on the latter that if it's not broke, if the present system serves well, why fix it? Why change for the sake of changing? We find, to say the least, ironic a position voiced by the government, echoed by the government, that on the matter of safety "We will do better." It is veiled with the usual attributes to have the roads and highways in the province of Ontario the safest in North America. "We value safety. Safety, for our government, is a priority," all befitting the day after Mother's Day.

The reality is that on the one hand you honour those commitments and on the other hand you cut the budget significantly so those women and those men who are enforcing the statutes will be there but they will be there in fewer numbers. It's difficult, to say the least, to reconcile the two positions. One is a commitment, but it loses its significance or raises doubt once you don't have the money and the staff therefore to adhere to it.

Mr Colle, the critic for the official opposition, has mentioned the position of the province of Quebec vis-à-vis what is being proposed there. I want to read into the record the position of both Manitoba and Quebec — their recent communiqués. The one from Manitoba, the province immediately to the west of Ontario, is one from November 23, 1995, and I quote:

"The purpose of our submission is to set out Manitoba's position on the future deregulation of the intercity bus industry. Our submission is brief as all significant problems experienced by this industry in Manitoba have been resolved within the current regulatory regime.... This positive record is the basis for our position that the existing system of economic regulation in Manitoba largely achieves its objectives, and is capable of managing the adjustments required by the industry to preserve its economic viability. There is simply no major problem that would be addressed by bus deregulation, and no significant constituency advocating it on other than theoretical or ideological grounds"

Three days before, November 20, 1995, the position of the province of Quebec, a larger jurisdiction than that of Manitoba, the province immediately to the east of Ontario, and I quote:

"In this context," says the Quebec government, "the most likely consequences of total intercity bus transport deregulation would be:"

Number 1, "the bus transport system would be limited to those services which are profitable." They are saying the bottom line. They point out to it, the right and the expectation that a profit will be generated.

Number 2, "a portion of the population which currently enjoys services would have to provide those services itself, or the government would have to intervene financially."

Mr Colle has mentioned that at present there is no mood for the federal government to dictate or to ask, especially the province of Quebec, to endorse a system which the province of Quebec does not wish to adhere to. In the real world, Monsieur Chrétien will not talk to either Mr Johnson or Monsieur Bouchard about intercity bus deregulation. It's not very high on the agenda, I can assure you. It's no time to go and tease the bears. Their position is recent; their position is clear. That of

Manitoba is recent; that position is clear as well. Who will benefit? In the charter business, our Ontario operators will be left trying to compete. The playing field will not be levelled.

I've given the true story in the House of having a flight from Europe, of course landing at Pearson; Prevost buses with bells and whistles bringing people to Niagara Falls and after two hours back on the bus, going for eight days to Quebec City. You can't compete with that because theirs is a regulated industry and yours is not.

The position of the various players is almost unanimous. I don't want to impute motive and charge anyone with motive. The big players are opposed. They see regulation for the purpose where you tap the most lucrative route, and given the history and the nature of our vast and magnificent land, you're asked to pay back and you subsidize with what you make on the lucrative route those who are less lucrative, those where the disabled, those where the seniors, those where the students — those where there is really, truly no alternative. People use what has become the most democratic system of transportation because it suits the need of the democratic class. The government doesn't wish to throw the poor, the disabled, people in small and remote communities, the seniors, in the ditch. No one wishes to have this.

When bus deregulation took place south of the border with our neighbours, within one year 4,000 — count them — lines were removed. That should suffice. Let me quote in the last minute that I have Freedom To Move. They've been around for some time. They're saying people in eastern Ontario — Elgin, Lambton, Essex, Haldimand, Oxford, Perth, Huron and Wellington counties — followed by northern Ontario — Cochrane and Nipigon — will be the ones most impacted.

Some of the presidents, members of the boards of the majors, are saying — Canadian Intercity Bus Task Force, OMCA, in 1995 in its brief predicted that once deregulation came to Ontario, American companies would begin a battle for the lucrative southern Ontario bus market. "An open market would result in a significant shakeout, with scheduled and charter markets dominated by US-based carriers. Ontario operators would be limited to less attractive markets, or to subcontract or subordinate alliance relationships with outside carriers."

I thank you for your time. I have chosen to let the experts in the field work their craft. I've tried, with my limited ability, to voice their concern in the limited allocation that we have for us. I thank the members of the committee.

1600

TRENTWAY-WAGAR INC

The Chair: First up making representations before the committee today will be Trentway-Wagar Inc. Good afternoon and welcome to the committee. Thank you for your indulgence while we had the opening comments. That clock actually is a bit wrong. We're remaining on schedule, I see. We'll have 20 minutes for your presentation. You can divide that as you see fit between an actual presentation and question and answer period.

Mr Jim Devlin: Thank you. My name is Jim Devlin. I'm president of Trentway-Wagar and one of the owners. I've been involved in the regulated bus industry for many years; as a matter of fact, 38 in total. I've been involved in the discussion of the regulation of the bus industry now in government committees, both at the federal and provincial levels, for in excess of 20 years. I guess you could say after all those years that I'm starting to become weary of talking about regulation of the bus industry.

Having said that, just a little background about our company first. Our roots are in Peterborough. The company was founded 40 years ago and has steadily grown through, by and large, acquisition. We now have operations in Kingston, Port Hope, Whitby, Toronto, Hamilton and Niagara Falls. Our company is split between line run charter and school bus, with charter being the largest part or component, although with the purchase of the Canada Coach Lines in 1993 from the Hamilton Street Railway, or the city of Hamilton, we got into the line run industry in a much larger format. We're now operating in excess of 300 buses, of which 119 are over-the-road highway coaches.

I'm here to speak in support of Bill 39, clear and simple. Bill 39 is not deregulation. Bill 39 is a bill that is, in my mind, 10 or 12 years overdue. Bill 39 brings to the regulated industry a way to deal with a lot of the things that are wrong, and have been wrong for many years, with the current rules and regulations. The system is very much broken and has been broken for some time.

When I look at the industry and the areas I've been involved in, both in line run and charter, I can tell you that there's overcapacity in the charter industry. Applications to the transport board for charter authorities are merely, in all cases, rubber-stamped, so much so that very seldom is there opposition to charter applications today.

The issue of Quebec in dealing with the charter industry: I think the whole province of Quebec is licensed to operate legally at Pearson airport, authorities that have been granted by the government through the board over the last five to six years. The fastest-growing market in Canada is the market through Pearson airport that the Quebec industry has now.

We have looked at the Asian market, we have looked at other markets to support our companies. That market is gone and I don't think there are very many carriers in Ontario looking at the market coming from Europe and France as lucrative any more. We just don't share in it. In my mind, in these discussions Quebec is a non-issue as far as charters are concerned; line run, they could be.

The line run industry, by and large, is a monopoly. It's a major monopoly and it has been a monopoly for many, many years. I personally don't think the public is well served with a monopoly. In fact, I know they're not. Once again, I can only speak from my personal experience.

Since the purchase of Canada Coach — first of all, Canada Coach was a major money loser for the Hamilton region, big-time loser, and that's why they sold it off. We bought it. We thought, look at it, maybe there are some things we can do, make some changes, address the efficiency issue. But, by and large, we bought it with the idea that it had to be expanded on. It was nothing more

than a feeder from the Kitchener to Niagara corridor to the major monopolies in Ontario.

With the purchase, we made our applications to serve the Niagara region from Toronto in competition with the monopoly; a hearing that probably cost us, in just out-of-pocket expenses, in excess of \$200,000; an application where we proposed, for the carriage of the disabled, fully accessible coaches — the fully accessible coaches had a market value of about \$475,000 to buy, which we did end up buying, by the way — and the board ruled against it. We had about 60 witnesses in support.

In their reasoning, they said the test of public need and convenience was not met. It was not met because we brought forward members of the disabled community to support the application, and there were not enough able-bodied people to support it. Therefore, we failed to meet the test of public need and convenience.

That's a system that's broken. I don't blame the board, because I don't think the board is getting enough direction. We have dual jurisdiction; we've got the ministry and we have the board, and they quite often go off in their own directions. As an industry, we're spinning out there like a spinning wheel because we don't know how to deal with it.

Bill 39 reduces a lot of that. It brings it down to the board. It takes enforcement away from the ministry, an area that, because of the lack of effective enforcement — and this is not a knock of the ministry and their staff, because I feel that with what they have to work, they do a very good job, but it's not very effective. I know of an unlicensed operation that started — 10 years of messing around in the courts, the licence review board, I think it's called. Ten years to try to stop this operator. Meanwhile, it grew from about one bus to over 30 in that 10-year period.

Bill 39 provides a mechanism that allows the industry, a licensed carrier, to put a matter to the board. User-pay, very effective, timely, all of which we don't have today. If I file a complaint with the ministry on an illegal operation, first of all, I never hear anything back; I don't know what's happening. That's why there are no complaints being filed now, because they're not allowed to discuss the investigation with us, and rightly so. With Bill 39, a licensed carrier would become a party to it. Therefore, we would be involved in the process. Illegal activities wouldn't be allowed to continue for 10 years.

I like Bill 39. By and large, what is in Bill 39 is the type of thing that, in all my years of working on committees to try to get, is there. Very effective. In fact, we used to have it many, many years ago. Unfortunately, the chairman of the board at that time didn't have the authority to do what we think Bill 39 will do. When the late Mr Shoniker was the chairman of the board, he ruled with an iron hand and people stayed in line.

If I could just for a minute discuss the issues of deregulation, there are many people in the bus industry who would say, "Devlin is a deregulationist; Devlin is trying to destroy the industry." Well, I'm neither. After 38 years, I think I'm going to retire out of this industry, and to destroy it now would affect my pensions. I'm here to make sure we have a healthy, financially viable industry.

We all share the issues of deregulation. Harmonization is a must. Ontario cannot proceed with deregulation without Quebec. But to hold up Bill 39 to deal with an issue that's not a part of Bill 39 is going to do tremendous harm to our industry. We need it now. Like I said before, it's long overdue.

I will publicly commit today to be involved in any committee that all parties of government would like to set to deal with the issues of deregulation. I would be the first one at the table to sit down and work on it, because harmonization is very important.

Safety: There are a lot of issues associated with safety, many of them, and there are no better people to discuss the issues of safety than those in the industry themselves. There are a lot of issues we would like to bring to the table. We're not bringing them now, we're not bringing harmonization now, because Bill 39 does not address either one of them.

1610

I strongly urge you to please support Bill 39. We need it now. We need those changes now so we can get on with business so we can bring some sanity to our industry. With the support of Bill 39 I'm going to ask you to send a message that competition is not bad. Mr Pouliot mentioned the Prevost coaches with all the bells and whistles. They're in the charter market. If you look at all the nice buses running around Toronto, I assure you that 99% of those buses are in the charter business, because it's very competitive and if you don't have the best, you're not in the business.

I'm not so sure the line run that you're concerned about, the people who require the services, are getting a fair deal. I don't think they're getting the best of service and they may not be getting the best rate that the service could be operated for. Competition is necessary.

In closing, the cabinet issued a — I forget the official word for it — anyway, it was a direction to the board in 1978 telling them to take four things into consideration in the test of public need and convenience. It was interesting that this was issued as a result of an application by a major carrier to operate over another carrier's route. It was Greyhound and Gray Coach, Greyhound to operate over Gray Coach's route from Sudbury to Toronto. A petition was filed at cabinet and cabinet upheld that there should be competition within the mode.

One of the items that was sent to the board: "The need for competition to ensure the best service at the lowest cost to the public, while maintaining the economic viability of licensed carriers." There have been no duplicate licences issued since 1978 that were challenged by the main line monopoly carriers.

Thank you. If you have any questions —

The Chair: Thank you, Mr Devlin. We'll start our questioning with the official opposition. We have nine minutes, obviously three minutes per party.

Mr Colle: Thank you, Mr Devlin. I appreciate your input. In terms of your position, you would like to see that this bill be used as a stepping stone to open deregulation; in other words, get rid of regulation and end up with an open marketplace in two years.

Mr Devlin: Obviously, Mr Colle, at this time I can't say that definitely. This bill is needed. If there were no

deregulation for the next 10 years, this bill is needed today. Deregulation is an issue that we don't know enough about. I know the government has set a deadline of January 1, 1998, but when you throw in the issue of harmonization, I think they do have some problems because I don't believe Quebec will be ready to deregulate on January 1, 1998. Without harmonization in Canada, I don't think any one province should move on its own and leave the neighbours open to come to our markets, but we can't go to their markets.

Mr Colle: What I'm trying to express to you is the concern we have that the preamble of this bill and this government's ideological bent is that they're saying they believe in deregulation and therefore this bill is going to set the stage for that. In essence, because of their belief — they don't believe regulation is needed in this industry — they have to take this first step to reach deregulation.

We're saying, like you, before you take that step, you should do an analysis to see the impact of it, and maybe there need to be some adjustments, as you said. There are obviously some problems in the industry; I concur with you there. At what point do you do this analysis to find out the impact of essentially this free-for-all that the government is bent on?

They have stated categorically in the House, they are going to get rid of all the regulations by January 1, 1998. The question is, what can we do in the interim to have them look at the impact that this is going to have on the industry and on communities?

Mr Devlin: Bill 39 itself does not address deregulation. Bill 39 is very important. Bill 39 will deal with the issues, the problems that we have today. I know the government has dealt with it as a transition period. From the industry point of view, we have looked for a lot of what is in Bill 39 for years.

I believe discussions should be had on the virtues of deregulation and they should be held between now and January 1, 1998. At the end of those discussions, it may be the ideal way to go. From a personal point of view, I'm not afraid of competition within Ontario. I have no problem competing with anyone in an open market within Ontario. I have some concerns with some of our friends south of the border. They do have advantages that we don't have. They've been known as a very mobile industry where they cherrypick: They're on the west coast one season, they're in Florida the next season. In fact, sometimes I wonder if they live in their buses, they're so mobile. But they would be difficult to deal with and there are some issues to address.

Quebec: I don't know how they do it. Maybe they should come up here and give us some lessons in running a company, but they seem to be able to operate a lot cheaper than we do. I hear taxes are greater in Quebec than Ontario, but there's something about the Quebec operations that they're allowed to operate cheaper. I don't know whether money is available to them cheaper or the cost of the Quebec-made bus is cheaper, but there are some advantages there.

We do have to sit down and address those issues. But to stall Bill 39 is not the way to do it. I think we have to start those discussions now because we don't want to

wait till the fall of 1997. Those discussions should be entered into at this time, but I strongly urge, don't hold up Bill 39.

Mr Pouliot: Thank you very much, Mr Devlin; always a renewed pleasure. I know of your contribution to the sector over many, many years. I have a supplementary question and I only have three minutes. It has been decreed that we share the time and rightly so.

Your opinion is that, with respect, you are in favour of Bill 39 because it simplifies the matter. You're hesitant about — in fact, I have a quote from you, Jim, which says, "I'm not in favour of deregulation." Then you go on to say, to support that, you would like to know more, more consultation, 10 years' harmonization. But you like enough in Bill 39 that you want to see it move forward. Is that your position?

Mr Devlin: As you know, when you were minister we had many discussions about the bad actors in the industry. Bill 39 provides a mechanism that will deal with those bad actors in a timely fashion, and that is very attractive to me.

Mr Pouliot: I agree with you on this part; it streamlines. But you see, I have here, and this comes from the ministry and I have to assume that the ministry and the minister are in tune here: "Statement to the Provincial Legislature by Transportation Minister Al Palladini," introducing interim measures to prepare for deregulation in the intercity bus industry. Then the minister says, right in the Leg, "The legislation I'm introducing today will allow a transition to full economic deregulation of the industry on January 1, 1998, a move that this government is committed to bringing about in an orderly manner." Then on page 2 he goes further: "Economic deregulation of Ontario's intercity bus industry will lead to an efficient system that provides appropriate levels of service based on market demand and the needs of the travelling public."

When I look at the heading there, and I did some representation in the same office — I should have brought the chair with me; it's one of those nice, comfortable chairs — this is the interim measure right in bold lettering here, what this bill is all about, what the catalyst is, what the heart of the bill is: deregulation, January 1, 1998. That's what they're selling. I mean, it's the Jays playing the Sox. The Indians come next week, Jim, but this is the ticket that you're buying when you endorse Bill 39. This is what makes the bill breathe.

Mr Devlin: Unless there's a section in Bill 39 that I haven't read, there's nothing in there that says this will cause deregulation. I know that's their goal. That's their goal and there are some problems with deregulation, and I think we all want to address those problems. That's their ultimate goal and I don't argue with their ultimate goal. Let's face it, we're the only transportation sector in Canada left that's regulated. But the bottom line is, Bill 39 does not itself deregulate the industry.

Mr Pouliot: But this is the only thing on the menu. I mean, here on the menu it says rice pudding and you believe they're going to serve me a steak.

Mr Devlin: But the bill itself, the legislation itself, will be the guideline to the board to regulate the industry. It won't be his statement, because I have learned a long

time ago that once it becomes law, you forget about all the statements in the House because it's only what's written in the bill.

1620

Mr Jack Carroll (Chatham-Kent): Mr Devlin, being a native of Peterborough, my questions will not be quite as flowery as Mr Pouliot's, but nevertheless, did I understand you to say that there's an illegal carrier that the government has been fighting with for 10 years that has gone from one to 30 buses in that 10-year period?

Mr Devlin: He has been regulated now because finally after all those years the government was just ready to shut the door on him and someone sold him a licence. But it took 10 years. I believe it was 10 years, and my friends over here could support me on that. In fact, it may even be more than 10 years.

Mr Carroll: Obviously proof that the current system doesn't work. Is the extraprovincial regulation of the motorcoach industry a federal jurisdiction?

Mr Devlin: It is. By the way, I heard the discussion in the House and there were some statements made that were in error on the regulatory issues. I am a federal carrier. So if Ontario was to continue regulation and the federal government deregulated, I could do whatever I want, because I'm a federal carrier and a federal undertaking is out of the province, into a province, point to point within a province. So there are a lot of issues at the federal level that have a major impact on what's going on in Ontario, and I sit on a federal committee dealing with those issues.

Mr Carroll: So you see the deregulation part from a federal standpoint being a totally separate issue from Bill 39?

Mr Devlin: If the federal government was to deregulate this afternoon, Bill 39 would be a non-issue to me: I'm deregulated.

Mr Carroll: So you are in favour of us working with the federal government to have deregulation take place, but your fear is that if we don't, we can't do it unilaterally. Is that what you're saying?

Mr Devlin: The Ontario government must work with the federal government as well as the other provinces to achieve harmonization in the rules on buses.

Mr Carroll: The Prevost buses you talked about and their access to Pearson airport, how has that happened in a regulated industry?

Mr Devlin: We all opposed, and somewhere along the way the train jumped the track and they all got licensed. By and large, there are very few carriers that you see at Pearson airport that are illegal from Quebec, because I think the whole province is licensed now. There are about 10 Ontario carriers and about 60 Quebec carriers licensed to operate from Pearson. That's been over the last, my guess is, four or five years.

Mr Carroll: How would deregulation change that?

Mr Devlin: It wouldn't.

Mr Carroll: So basically we're deregulated now is what you're saying?

Mr Devlin: In the charter industry there are a lot of players and it's very competitive. There are those in the charter industry who say by and large it's deregulated because everybody just does what they want to do

anyway. But it's the line run industry that is the other side of it which is by and large a monopoly.

The Chair: Thank you very much, Mr Devlin. We appreciate your taking the time to come and make representation before us here today.

SILVER FOX TOURS

The Chair: Our next group up is Silver Fox Tours, Avo Kingu, general manager. Good afternoon, sir. Again, we have 20 minutes to use as you see fit, divided between presentation and question and answer time.

Mr Avo Kingu: Good afternoon, ladies and gentlemen. A little bit about my company. We're a small tour operator based in London. We do approximately, I'd say, 6,000 to 10,000 people a year. We own no coaches, but we use coaches daily and we have to deal with approximately, 15 coach companies in southwestern Ontario and negotiate individually with everybody, which is a terrible burden. I get pricing from \$550 a day currently to \$950 a day. The cities are approximately half an hour apart and the equipment is no different.

It's a burden to me and to the public, and the equipment is never guaranteed. We get equipment from MC-8s that are still operating to brand-new, bells-and-whistles Prevosts. If I ask for a Prevost, they say, yes, a Prevost will show up, but I get an MC-8. Who do I complain to? The man has a monopoly. I can't complain to anybody. I can say, "Hey, why did you send it to me?" but I have no option. I cannot say to him, "Oh, I'll get John's bus." I can't do that because the man has a monopoly. I have to live with it, the public has to live with it, and it's bad for business. It's bad for business because I have to deal with so many layers, layer upon layer, and different every time. If I want to sell a brochure or a product throughout Ontario, it's a burden that's very hard to live with.

That is the one big point that I wanted this committee to understand, as a small businessman. I'm not a big operator, but a small entrepreneur.

We have thought of buying coaches. There is a big, crying need in London for a small coach: 15, 20 seats. The last time I inquired about getting a licence, they told me, "Your hearing's going to cost you \$20,000, and that doesn't guarantee you a licence." So what am I to do? I just throw my hands up and walk away from it. I could put a couple of those coaches into charters immediately and move people, not cancel trips, service my customers, but I can't because there are a bunch of people holding licences who won't dispense with them, who protect themselves, and there are people who hold these licences, have no coaches and won't release the licences.

I guess it was about six years ago. There's a chap in Strathroy, Ontario, who holds a London licence. He sold all his coaches and he's sat on those licences ever since. I offered to buy those licences from him; he wouldn't sell them. So why keep them? Well, it's like money in a pocket. The next guy comes, maybe he'll offer you more. And that's not right. That's not in the public interest; it's not in the interest of the small businessman and everybody involved in this industry.

That \$20,000 that we had talked about, I could have put that down on that coach. The coach only costs \$40,000 or \$50,000 for those small ones, and I would put

some Ontario people to work, because it could be used. But I'm not going to spend \$20,000 to find out that, "Hey, you can't have the licence," because somebody has to be protected.

That's the nitty-gritty of small business. I cannot expand. I cannot get the product. I can't get the quality, and neither can the public, because I sell to the public. If I advertise a deluxe motorcoach and an MC-8 shows up, or a 9 that's been used for umpteen years, who's going to get the complaints? Me? Yes, me. Who's going to suffer? Me. The coach company? No. That is bad for my business. I cannot grow.

Those are the basic reasons for my wanting deregulation. I'm not afraid of competition. I'm not afraid of anybody, nobody in this business, because I know what I do and I try to do it with quality. If we're running the same kind of equipment and our pricing is really close to the mark, I don't have a problem, because I do it with quality, or I try to. So the sooner this deregulation happens, the better it is for the industry. We can have 10 tour operators side by side and we'll all prosper if we know what we're doing. It's the same as running McDonald's and Wendy's. They're all together and they all do more business because they're together. The myriad doesn't affect the business; it's the availability of the licences to everybody.

I'll leave it at that. If you have any questions, I'll gladly answer them.

1630

Mr Pouliot: I have only appreciation for anyone who is not a major, by your own admittance, and who's trying to, first, survive, make ends meet, prosper, and feels very confident that if not on the overall, certainly in a niche market, if you know your product, you know the clientele, you do your own real-life marketing, if you wish, that no matter what, you will do quite well.

You don't have a licence that is worth \$20,000 or in some cases over \$100,000, right? You don't use your privileges in that context, if you wish, or your right to operate as collateral. It doesn't apply here, right?

Mr Kingu: Yes.

Mr Pouliot: It does apply for other people where licences have, we know, changed hands.

You see, I don't think that certainly our party is opposed to the essence of the free marketplace, providing that if you can regulate competition, then it takes its place.

The thing is, we have 882 municipalities in the province of Ontario. If it were only that simple, and we saw what happens by way of regulations. I want to put this to you in terms of a question. Aren't you concerned that — it could be anyone — that ABC company is so big — and if we wish to talk about cartel and monopoly, we'll put them under that definition — that they'll take a beating along your route, hypothetically of course, and they'll take a beating for six months, take a beating for a year, and then wave you goodbye?

Mr Kingu: As a quick answer to you, as an illustration talking about big players, the big player is Greyhound. Can we take them as an illustration? I used to use Greyhound very frequently and it was one of my major suppliers. Greyhound pulled out of the market. They

decided when they purchased the Peterborough runs they were going to use their equipment there and they upped their prices, and I said, "No, I'm not going to use you any more, not at those prices." I guess it was about three, four months ago, guess who's knocking at my door? Greyhound. What happened to the prices? They dropped.

But the thing is that it doesn't matter if you're big or small. In the end, quality, service and price tied together will win the day. You can have 100 buses out there and if you're not efficient, you're going to be out the door, the same as with me. I'm very cost-conscious. I operate my business with only about four, five full-time people, and we are profitable, have been for the last eight years, and we've grown every year.

I really, truly believe that something has to be done to cut these chains so that I can go to you and sell you something or I can go to Harry and sell him something without being told, "No, you can't do it because you've got to have this piece of paper." If you sold this piece of paper to everybody — make your rules and regulations about the piece of paper: "You've got to operate safely" — I agree with that — "you've got to operate this, and this," but make it available to everybody. That's the key, not to cost me \$20,000 and I don't know at the end whether I'm going to have it or not. That's not right.

Mr Frank Klees (York-Mackenzie): I gather from your comments that you're not objecting to standards of operation.

Mr Kingu: No.

Mr Klees: What I think I hear you saying is that your experience has been that because of the monopoly situations that exist now, really there are two people who are disadvantaged. One is you because you don't have the choice that as an independent businessperson you feel you need to have in order to make good business decisions —

Mr Kingu: That's about right, yes.

Mr Klees: — and the other is the customer, the user of the service, who, because you don't have choice as to the kind of vehicle that you can either lease or use for a particular route — in the end, your customers don't have a choice because you don't have the ability to then pass on whatever efficiencies and savings you'd be able to generate if you had the ability to operate as you would do.

So I'd like to just have you comment as to what you feel the effect on the user of transportation services would be from a price component standpoint.

The second part of my question is, do you feel now, because of the monopoly circumstances that exist, that some of the large players who have that monopoly are actually cross-subsidizing from another area of their business to unfairly pass on some of those costs to the end user of the service?

Mr Kingu: First of all, I'll reply to the last part that you mention. I don't know about the internal book-keeping, so I can't comment on that end of it. But I do know the big disparity in price. Now, how Greyhound can come one day and charge me this amount of dollars and then the next day or a year later come back and charge me differently, I don't know.

But as an illustration to the end user, which is the general public — and I'll go back to that initial one that I was talking about: \$550 a day or \$950 a day. That \$950 is the true price that I paid for somebody operating out of a small town called Parkhill. There's only one operator out of there and there's a horticultural association that we deal with and we do day trips for them and we do other things for them. So you can imagine, I have to pay \$950 for a day trip instead of \$550. So who pays for it? I don't pay for it. The public ends up paying for it.

In that instance, I've had cases where I've been guaranteed nice equipment, and, like I say, an old MC-8 shows up — which is 15 years old, it's muddy, it hasn't been cleaned — and I have no recourse. People get mad at me, "Why are you doing this?" and I say, "Well, I can't, blah, blah, blah." It's always an explanation. So the end user, the public, is not happy with this. And the price: I upped my price by 20%, 30% because of that, because somebody has to pay that difference.

I do some trips down to Atlantic City. Out of London, it costs me to go down to Atlantic City \$2,600 for a coach. Out of St Catharines, which is closer, they charge me \$5,400. That's what they want. So what do I do? I shuffle people, because I do want to work within the regulations. But that's wrong, and that's the nitty-gritty of it.

Mr Colle: Just quickly, in terms of Bill 39, how is that going to get rid of the monopolies that you feel right now are impeding your business?

Mr Kingu: Bill 39? I'd like to see deregulation tomorrow. It's just a stopgap. I'm waiting until the industry's deregulated on January 1, 1988, to go out and buy myself a coach and get some people working.

Mr Colle: So you'd like to see total deregulation.

Mr Kingu: Yes.

Mr Colle: But in the interim there's nothing in Bill 39 that gets rid of monopolies.

Mr Kingu: No. It's just a stopgap.

Mr Colle: I'll just pass it on to my colleague here from the Ottawa Valley.

Mr Jean-Marc Lalonde (Prescott and Russell): I can see you're a broker. You're not an operator, I would call it.

Mr Kingu: I would like to be but I can't.

Mr Lalonde: But you said that they had the monopoly and still you see on a daily basis the cost varies between \$550 and \$950.

I've had the experience before with Voyageur, which started in my home town. They had the whole monopoly. We couldn't get hold of anybody else because they were the only one that had the licence for charters east of Ottawa. I could see why you're in favour of this Bill 39, which would deregulate at the present time.

1640

But my concern is, in eastern Ontario — especially in the Hawkesbury area, which at the present time the Quebec buses are picking up on the Ontario side — there's nothing we can do. If this bill goes through without amendment, it would mean the elimination of two bus companies or two small operators in my own area. In your case, you would benefit, because you will have more people to go to to get an estimate or a price for a

trip; because you just mentioned, from St Catharines it costs \$5,000 and from London it costs \$2,600.

I just can't see at the present time — in your case it's all right probably, because you're not on the border, on the southern border, US border or the Quebec border. But how do you think you are going to benefit from it at the present time, because you do have the choice between \$550 and \$950 a day?

Mr Kingu: I won't benefit right now from it.

Mr Lalonde: You don't have enough operators?

Mr Kingu: That's another thing you can come into. I don't think there are enough operators. I don't think there's enough equipment. You take certain periods of this year, and certain peak months in the spring and in the fall, which is the main travel period for seniors and students and so on, and the equipment shortages are very major. I can't go out and get another coach. I can't go out and promise to get another coach. Why shouldn't I be able to? If the local supply doesn't have it, why shouldn't I be able to go and get somebody from somewhere?

Mr Lalonde: My concern is the full deregulation would open up the — it's a door for a large operator which will kill the small one.

Mr Kingu: I don't think so, because I'll tell you, I can operate it as cheaply as anybody in Ontario right now, and I don't think the Quebec suppliers — I had a chat, as a matter of fact, last week with a chap who's in Quebec, and we were comparing coach prices. We can still do business.

Mr Lalonde: Just my last question, Mr Chairman. Do you think that if we were to deregulate within Ontario only it would be better?

Mr Kingu: Hopefully, it's the first step.

Mr Lalonde: Thank you.

The Chair: Thank you, Mr Kingu, for taking the time to come before us and make your comments here today. We appreciate it.

AMALGAMATED TRANSIT UNION, CANADIAN COUNCIL

The Chair: Our next presentation will be from the Amalgamated Transit Union, Canadian Council, Mr Tom Parkin. Oh, I see we may have a different name here. Good afternoon. Are you Mr Parkin or Mr Foster?

Mr Tom Parkin: I'm Tom Parkin. But on behalf of Ken Foster, who is the Canadian director of the Amalgamated Transit Union, I want to thank the committee and the House leaders for making this opportunity possible to comment on Bill 39, changes to the Ontario Highway Transport Board Act and the Public Vehicles Act.

A little preface is that we are the largest representative of transit employees in the intercity bus business. Generally speaking, especially listening to some of the comments and concerns by the previous operator, there's a lot of things that we can agree on with him and with others seeing as we tend to look at ourselves as being partners in the industry, and therefore anything that helps streamline and make the regulatory system more efficient, puts more buses on the road, brings more people on to buses and gets through the regulatory system faster is something that we will support. Within this bill, there are things that we do support and we would like to be able

to say that with some amendments, which I want to speak about, we might be able to support the bill as a whole.

The board, like other boards that are quasi-judicial, in our opinion, especially when moving to a sole arbitrator who will be part-time and potentially limiting the number of rehearings or ability to rehear, it may be advisable, and we would suggest, moving towards something like a purpose clause, just because it's been a trend now that, generally speaking, no appeals to cabinet are allowed. There has to be that aspect of what is the crown's interest and a statement of that. Losing the appeal to cabinet, which surely had to go at some point, should be fulfilled by some sort of purpose clause. We have drafted something. It would state the purpose of the board to be that the board "exists to protect the transportation interests of smaller communities and ensure the greatest level of service possible for the commercial use of the public's highways." It leaves a fairly broad opening.

In the same way that the CRTC, for example, is the custodian of the public's airways, we look for the transport board as the custodian of the public's highways. It's announced that it is owned by the public and therefore the public has a voice in that, and there needs to be a representative purpose to that. I hope you will consider that, and maybe we can have something approaching that in terms of an amendment.

With respect to rehearing, the old section 16 allowed for rehearing, and it was non-specific. If the board wanted to rehear from time to time, it could rehear. It didn't really have to ask anybody. Bill 39 is taking out rehearing totally. I think that's a mistake and I want to tell you why.

Sometimes — I'm sure you'll all be surprised — people will make deputations, even to boards, that are not completely accurate, sometimes exaggerated by puffed-up prose in lengthy oratories in a hearing or obfuscating terminology in a report. The board doesn't always get a clear idea of what's going on. Then should we not be able to have the ability to rehear? It's possible that fraudulent or misleading evidence which led to a board decision couldn't be reconsidered. That's a very serious problem. In a sense, it's a natural justice thing. Secondly, there are cases where boards simply make errors and there needs to be a process for re-evaluating what seems to be an error.

What we've been thinking is whether there's a way of trying to get rid of a lot of the frivolous rehearings but still maintain the essential natural justice of what I think the hearings were intended to do, and that's make sure that decisions were consistent, that people could depend on what the outcomes were going to be. I would hope that if an amendment of that sort came forward, you could support it.

On the issue of appeal to the courts, this is something I have to say up front: Despite what it says in the presentation, I'm of two minds about exactly what's in the act. I've heard from some lawyers who say that the new section 28, which says all decisions are binding, will mean that you won't be able to appeal to a court even under the Statutory Powers Procedure Act. Others have said no, you can never outlaw the justiciability of a law. None the less, I'm concerned enough — and I think it's

obvious that that should be justiciable — that obviously you can't allow a judicial board to break a law and then not have some recourse to that. Either a really good clarification for me or just being specific in the act would deal with that issue well.

On the issue of oral hearings, which I guess were in sections 22 and 23, something like that, 21, 22, 23: I think the intention of this was to move more quickly. I think there are some times when being wedded to a written process can slow you down. It is cases where you get into 40 pages of lawyers' text that is really designed to obscure the purpose where sometimes it would be a heck of a lot faster to be able to bring somebody in and give them a good cross-examination and really, in essence, whip them down and see what it is they're driving at.

As well, the oral hearings may be a strength for us right now as an Ontario-based industry with respect to Quebec interests possibly trying to come in and take the Ontario-domiciled industry's work in the so-called runup period, which I'll discuss in a minute.

1650

The other issue is that of who is a party in front of this board, and it's not completely sure who someone with an economic interest would be. In part II, one of the new definitions there is what an economic interest is. Is a mayor whose town loses service, a couple of people move out, and therefore the storekeeper doesn't do as well, so he's receiving less revenue — does that make him somebody with an economic interest? Therefore, could that person appear at the board? That's not really clear.

There are some issues about that. I think we should just be more clear about allowing parties to be people, in effect, as the act was before, but at the same time I respect what the ministry has tried to do to move issues ahead more quickly and to deal with some of the really guerilla warfare tactics that have happened at the board that have nothing to do with board licences and everything to do with obscure commercial interests. Perhaps while bringing back a person as a party, if we also increase the punishment for people who got involved in vexatious, frivolous matters in hearings in front of the board, we might be able to offset that and still allow the community representation, which I think is the purpose of the act, as I believe it is, to regulate it in the public's interest. Therefore, I see that the public should be allowed to be someone to be present at a board hearing and make application.

There is another issue with regard to access to justice. As I think all the members of the committee will know, the elimination of funding from the Ministry of Transportation will mean a large increase in the fees that will have to be paid. There is a bit of an issue in my mind about whether, for example, a smaller operator really has the ability, regardless of whether this person has been proven right or believed that he was going to be proven right — you can think that you are the rightest person in the world and you go in and you are the wrongest person in the world, and then you get hit with a big fee at the end of the game. For someone who is a small operator, that's got to be a detriment. This is a legal body and in these

situations there is no legal aid or place a smaller organization could go to ask for some sort of reduced payment. To me, it's an access-to-justice issue and there should be some commitment to allowing for smaller business or individuals to not be unjustly penalized by exercising their right to participate.

On transitional issues: It's very clear that the ministry has taken the position that anything that is up to a hearing, not in the hearing yet, will have to go under the new rules. It seems to me that once you've made your application and you go in, you should be treated under the same rules throughout unless there's a huge overriding reason. I don't see a huge overriding reason why somebody should have to reapply and go through a lot of the red tape that's being suggested here.

Finally, notice period: The notice period in the previous act, in the legislation, was marked at 10 days. The ministerial statement indicated that we'd be moving to 90 days for complete abandonment and 30 days for service reduction. When I looked in the legislation, it wasn't there, and I found out later that the intention was to bring it forward in regulation. If it was in the legislation before, my opinion would be that we should carry that. If there's a true commitment to those 90- and 30-day periods, we should put it up front and let it be discussed.

Those are the changes in the act that we feel the government caucus could suggest or accept that would make us feel much better about the bill.

Leaving Bill 39 aside for a second, we have a very firm position with respect to deregulation, and that is that we oppose it. I'll put it this way: The way we view it is that Minister Palladini is really testing out a trial balloon here. He's talked about it. Nothing's been done on it yet, obviously, although we've seen some reforms here but nothing that is necessarily leading to that conclusion. I think that is an opportunity for people to be here and see how they feel. You can make your mind up and see whether you want to let that trial balloon float away or not. I don't think people should feel too wedded to it.

The reasons for our opposition are fairly clear. We got together with a few other groups last fall when we heard about the possibility of this policy — the Canadian Federation of Students and the Ontario Coalition of Senior Citizens' Organizations and the United Transportation Union, which represents employees of Ontario Northland — and we did a research paper. I would be more than happy to give it to anyone who wished a copy of it; I think it's been liberally sprinkled around. It deals with some of the issues that have been put up as part of the trial balloon for why we should be going in this direction.

For example, one of the reasons often stated is that since 1981, I think is the reference, 400 communities have lost service. That's down from 1,500 to 1,100 today. That's a 25% community loss, which is pretty terrible, admittedly. But when we look at what happened in the United States from 1982 just to 1991, we've seen a 52% loss under deregulation. So the argument that we lost 400 stops under regulation isn't really an argument for deregulation when you look at the deregulation statistics. In terms of preserving service to the smaller commun-

ities, it's fairly clear which system has done that when you do a little comparative with the American experience.

We're also very concerned about the emergence of unregulated route monopolies. This does not serve the bus industry as a whole or the consumer well. In American and British deregulation, what tended to happen was actually less, not more competition. In England, it was a case of buyouts, a lot of buyouts. There was actually a monopoly corporation publicly owned in England — in Britain, I should say — and it was broken up, privatized. But then the new private companies ended up buying each other, so it was kind of the same in the end anyway.

In the United States, it was a little bit different, reflective of the business attitude there. It was an "eliminate the competition" kind of thing, try to get your regional area under control and then try to get rid of the competition as you can, including running at a loss and whatever tactic you can use to drive competitors out.

If we look at what happened in the airline industry since 1988 deregulation, that's fairly significant. We had Wardair, Nordair and Vacationair — many, many smaller airlines which were competing in a regulated market, which all disappeared. Now we're really down to — unless Greyhound gets in the game, which may or may not happen — two airlines, one of which is basically an American-controlled airline.

We've had less competition, not more competition, and what happened, of course, with less competition was that the air fares in the airline industry went up by 31% in the first four years, which outstripped inflation quite a bit, despite the fact that we saw the seat sales, or maybe I should say because we saw all the seat sales; because of running at a loss and trying to conquer routes, somebody had to make it up, and that's really what happened.

In our opinion as an organization, regulation is essential to maintaining healthy competition, and going the other way would be a very big mistake.

Another issue that's been raised is that of smaller buses: Why are we running 47-passenger coaches from Owen Sound down to Guelph? Why don't we run buses? Under the Highway Traffic Act, which is the reference for what a bus is under the Public Vehicles Act, a bus is any vehicle that carries 10 people or more and is, under the Public Vehicles Act, registered as a public vehicle. It's just not an issue. They could be running buses if they want, but as others might mention to you, the cost of the bus in and of itself is not the major — it is a major, but not the major — contributing overhead cost; it's mostly the fuel and wages and insurance and that sort of thing. I don't think we should get sidetracked on that.

I want to mention the possibility of a real strong impact on GO Transit. When we are running buses from Guelph or Stouffville or Oshawa or Hamilton, they are now subsidized, they run a very good service — I think we'd all say that — they are the safest service in North America and they arrive 99% on time. With deregulation, the competition could run against them, but the problem is that it would likely run against them only during peak time, because obviously there are times, as there are with subsidized service, when it doesn't make money. A private company is not going to come and try to compete against that time of day, obviously. It's going to be peak

rush-hour service only. If GO Transit starts losing the money it makes during those small segments of the day where it actually earns money, then that means even more cuts to the service to your communities. I think it's just very important that you be aware of the damage that cherry-picking could do to the service your constituent rely upon.

1700

Finally, Quebec interests: I think it just goes without saying that it would be foolish to push ahead with deregulation in Ontario when Quebec-based companies can come in and do Ontario work and Ontario-based companies can't go and do Quebec work. There needs to be a national plan on this. There is a national process on this and I think that's what we should hang our hats on.

Today we're just talking about the regulatory system, trying to get that in order, do a little efficiency work. I've talked a little bit about the trial balloon that you've put up. I want to mention that the work we've been doing isn't completely legislative committees, as I'm sure you'll know. If the Chair doesn't mind my using some props, I'd like to just show you a few of the responses I've been receiving over the last little while from riders of the service. We have petitions and postcards, a fairly large amount of each — I would say a rough count is about 11,000 as of this morning — from people writing us and saying, "We don't want to lose our community service." So these are from your constituencies, and this is the trial balloon. I've got to say that I don't think the response is really what you want. It goes on here a bit.

It will give you the idea that we've been active. We've been out there talking to people. We've been out trying to listen to people about the issue. What we want to suggest to you is a trial balloon. I want to ask that the members consider going out and doing a little listening of their own, perhaps doing a little listening to whoever is the regional company in your area, checking in with them. Mr Murdoch isn't here, but in Owen Sound, for example, the city of Owen Sound owns the bus terminal. If there are no buses in the bus terminal, the city of Owen Sound is going to lose money. Maybe the transportation manager should be checked with, in the case of Mr Murdoch, or other people like businesses that are auto parts suppliers or computer parts suppliers who depend on that BPX. There's some listening that I think you should go and do. I think you'll find that people are pretty concerned about what the impact could be on their community.

I want to just mention a few of the quotes that we've pulled together.

PMCL — I don't know if Mr Debeau is appearing in front of the committee, but I read him in a newspaper saying, "Rural Ontario is going to suffer if intercity bus service is deregulated."

Reg DeNure who is down from Chatham, Chatham Coach Lines, said, "If it isn't broken, why fix it?" That's the shorter part of a rather longer ramble.

Mr Devlin, whom we've met with before, has stated to us his opposition to deregulation.

The Chair: We have to ask you to wrap up fairly quickly, Mr Parkin. We're over 20 minutes.

Mr Parkin: I'm right at the end.

The OMCA itself has stated that it has a lot of concerns about the impact on safety and the viability of the industry.

Thanks for your invitation to have me here. I appreciate it. I hope you will listen to some of the people back in your constituencies.

The Chair: Thank you very much, Mr Parkin. As I said, that does use our 20 minutes, so there won't be an opportunity for questions, but we appreciate your taking the time to come down before us to make some comments here today.

P.M. BUNTING AND ASSOCIATES

The Chair: The next group up is P.M. Bunting and Associates, Dr Mark Bunting. Good afternoon, Dr Bunting. Again, we have 20 minutes for you to divide as you see fit between presentation and question and answer period.

Dr Mark Bunting: I am a transportation economist and policy analyst, and over the last couple of years I've had the benefit of doing some work for the Ontario and Alberta governments and also for the Ontario Motor Coach Association on bus policy and deregulation issues.

Clearly, we're here to talk about Bill 39, but having read it through, and I'll admit somewhat superficially, I don't think I really see major problems with this piece of legislation. It streamlines the process and I think that's a benefit and it's worthwhile. I do have a few questions in my mind which I will leave to those of a legal cast of mind. I certainly think the issue of who is an interested party is an interesting question because it raises the question as to whether the revised regulatory process will serve a broader public mandate or indeed whether the government will deal with the broader public issues in some other way.

My intention is to deal with concerns which I understood were before this committee and the government about what happens after the Bill 39 process is set up, and I would add also what happens during the runup to 1998.

What I'd like to do is not speak for or against deregulation, but rather to give you an interpretation of what happened in Britain when they deregulated the intercity market and what I think might be the implication for us here.

Before doing that, I want to make some general remarks about the British case because there are obviously some important differences. First of all, as a brief summary, the intercity deregulation was, in my opinion, a modest success. Certainly from a financial point of view it worked well and there wasn't a great deal of adverse comment about losses of services; there was some and I'll talk about that later.

The main reason for that was that they had a very particular industry structure which we don't have here and also the availability of services provided by local governments, and I shall be turning to that later. But that's an important difference.

The second thing to keep in mind is, as in Ontario, the intercity market is a small part of a larger bus market. In the UK, the bus industry is worth about \$7 billion a year,

of which only 4%, about \$300 million, is due to the intercity scheduled market and I might add that about 80% of that I believe now is taken by one carrier, one dominant carrier in that country — certainly not the same as here. It's also important to keep in mind that when you hear comment about the British experience, typically much of the adverse comment concerns urban services where there are some interesting issues and not intercity. There's been very little debate on that score.

Finally, I want to point out that in Britain what you saw was the result of both deregulation and privatization, whereas what we're looking at is just deregulation, so we shouldn't expect the same scale of activity here.

With that little preface, I'll go into my little story. There are copies of my presentation circulating, so you don't need to take notes.

Prior to deregulation, the National Bus Co, which of course was the public sector, operated both local and intercity operations throughout Britain. They set up the National Express division to organize and market intercity services which were provided by many other companies. When the government deregulated services in 1980 National Express, still a public company, had spent several years analysing its market and they were ready to compete — and that's an important issue. We don't have the same sort of situation here with a dominant carrier that is an obvious market leader.

Immediately after deregulation, they were challenged by a consortium of bus operators — and it's important that National Express saw them off really quickly, and they did that within about six months. It took about two years for the consortium to fold, but they had done the job on them in six months.

I doubt that we're going to see that kind of stabilization here and the reason is that we have several very capable carriers and the possibility of entry from the US. We might eventually be facing service by one, I hope strong, carrier, but not before a period of uncertainty and the question is what damage that may do to the public transport market in the interim.

During the 1980s, National Express operated within the public sector. In 1988, it was privatized; it was sold to its management. Because they were a marketing and planning unit and not a bus operator, they continued to contract for services. This is a rather unusual model from our perspective. It's rather like the old GO Transit model, but not what we have now.

In 1991, the company was sold on to its investors and it's now listed on the London Stock Exchange and anyone who bought stock at the time did very well. It's a profitable company. They are able to acquire capital for expansion, they now own the fourth-largest regional airport in the UK, a large European tour operator, and they've also developed a parallel airport coach system, so these are no slouches.

1710

Back to what happened under deregulation: One of the immediate effects was a sharp drop in fares on the main routes — about 50% — and the services improved significantly. During this period the traffic went up. There were large gains in traffic, and some of it came from British Rail, but not all of it. However, since then, fares

have crept up gradually. They're now back to where they were before deregulation, pretty much. You can still get a good deal on the trunk routes coming into and out of London, but that, combined with British Rail's response, because we're talking about quite a capable rail operator as opposed to what we have in this country, has basically eliminated most of those gains. So National Express is back to the traffic it had before deregulation.

The other interesting feature is that National Express, and I think you'll see this here, has moved off standardized, distance-based fare structures. What they do is differentiate by market, and what that means is that on the less-travelled routes you get higher fares. That's inevitable. That suggests increased competition in Ontario might result in some fare cuts, but they're not going to last long. Where you're going to see the competition that's significant and beneficial, in my opinion, is in service quality. You'll see perhaps more use of tour quality coaches on the main runs and possibly increased frequency on the main routes.

Of course, the other side of this, and it's been mentioned already, is that as the company focused on profitable routes it cut back on services to smaller communities. There's not a lot of information on this. There were some studies done by the DOT and other organizations. There was one study in the east Midlands area which suggested that for cities that were larger in size than 100,000 they got more service; if you were below that, you got less. In a town I used to live in, Loughborough, which is about 100 miles north of London, a population about 50,000, the services dropped from about 96 departures a week to about 30 over a period of four years.

This isn't particularly surprising. You shouldn't expect operators in a competitive environment to support money-losing services. What is a little less clear in the British case is whether it mattered, whether this was a particularly important loss, because in many areas local bus services are provided by the counties, and that provides people the opportunity to connect to the urban centres and thence to get intercity services. So rural services may be not consistently good throughout Britain — there are some bad areas to be — but essentially there is an alternative. Here we don't have the comparable alternative: local services running through rural areas, subsidized by some form of local government.

The other point I want to make about local services is that a lot of communities do not now have a great deal of service and I think it may sound a little crude, but there may not be a lot to be lost. I think an important issue is, what in fact are we talking about?

In concluding my remarks, I want to draw attention to two particular features, and this is going to particularly focus on what I think should be happening during the regime that is being set up by Bill 39, because the issue is in fact what is the larger context within which this bill operates and what are the things you need to do to make deregulation a success if and when it occurs?

First of all, National Express owns very few buses. I've already said that they contract for services throughout Britain, and I think this is an important reason for their success. The company's focus is on market research and planning, service design, quality control and financial

management. This results in a strategic business that is less concerned with operational details and more focused on a workable passenger system. I think it is an important point that the focus on the passenger system, which you'll see in competent airlines and you see in National Express, is what partly explains their success. What you're doing is adding value for the customer.

There is no equivalent to National Express here. There isn't one phone number that I can call to get information on services throughout Ontario or to book a seat. Although there are some good carriers in Ontario, I don't really have the same assurance of timely, convenient and consistently high-quality service throughout the province, because we have a fragmented system. Unless government plays a direct role, and this obviously seems pretty unlikely, we are going to only get an effective system if one carrier dominates. That may seem a little hard. It may sound as if I'm against competition, but I think we have to raise some questions about what it is we want at the end. The alternative is fragmentation and the uncertainty, the unevenness of quality of service that goes with that.

So the issue for me is not whether deregulation is good or bad policy, but what should be done while Bill 39's streamlined regulation is in force. In the runup to 1998, should the regulator limit change, in effect freezing a fragmented industry, or actively encourage industry consolidation and repositioning? Putting it another way, in providing policy direction to a new regulator, should the province say what bus system it wants following this interim period?

The other concern that I've alluded to is the impact of deregulation on smaller communities. Obviously, there may be low-cost operators, and that's certainly an argument that my colleagues in Alberta and Ontario have alluded to from time to time, that they may take up the slack. But some communities are bound to lose out. I think we have to be realistic about this. Some of the new services that we get may not be that well-connected with the services on the main routes. In Alberta there's been some direct attempt to negotiate with Greyhound to make sure there are those connections, but we shouldn't assume that we're going to get them here.

For many years we relied on the regulatory bargain which protected intercity runs in exchange for service to smaller communities. This bargain doesn't operate any more. We can't rely on regulation to assure service to small communities. That can't be an argument for maintaining regulation. If these services are truly essential, they will have to be provided some other way.

That brings me to the other feature of Britain's bus market which I mentioned, and that is the role of local government in providing bus service, not only in urban areas but also to outlying communities. In Britain, planning and funding of these services is a local responsibility. There's a little bit of indirect funding from central government, but it's essentially a local matter.

This suggests that we should ask not how to prevent service cuts through regulation, but ask who is responsible for services of a local or regional nature. If the interest is local, why not also the responsibility to decide what kind of service should be provided? The province

can play a role by facilitating cooperative planning among communities, but decisions on services and funding should rest at the local level. Communities may choose not to support these services and may lose them, but this would simply reflect local priorities. I see this as a proper exercise of political responsibility. That concludes my remarks and I would be pleased to try and answer your questions.

Mr Joseph N. Tascona (Simcoe Centre): Thank you for your presentation. I'm just interested in your comments with respect to England, and what resulted with what was a major carrier, and with respect to smaller communities. As you noted in your paper, you said there's not much service provided at this time, but when you make the statement — I believe it's at page 2, number 3, under deregulation — you finish off saying, "Ontario may eventually be served by one strong carrier, but not before a period of uncertainty, which may impair the market for public transport." I just ask you why it would impair and why you think there's a need for one dominant carrier in this province.

Dr Bunting: To give you an example of the kinds of problems that have occurred in the urban bus market in Britain, where there has been a period of considerable competition, instability, uncertainty, the market for public transport has continued to decline. In other words, the hope for improvement in the public market by essentially entertaining privatization and deregulation hasn't come to pass, and part of the concern is that the public may be confused by the variety of operators, the variations in service levels, changes in carriers, because of course some carriers are going to go broke and other ones will come in — that's part of what a market's all about — and the concern is that that's going to impair the market from that point of view.

The bus industry has particularly worked hard to counter a very negative image. They've tried to improve the quality of bus stations, tried to improve the quality of the equipment, but you can lose that quite quickly. Certainly the rail system got a very bad reputation many years ago and it certainly didn't do it any good. So I think that the issue is not necessarily whether or not one should deregulate, but what can one do to encourage some degree of consistency among the industry to encourage the industry to maintain high standards not only on the safety side but in terms of public service.

Mr Tascona: But wouldn't competition in the industry encourage there to be service in the smaller centres, which doesn't exist at this time for this province?

Dr Bunting: In some centres you will get lower-cost operators. In many cases that will be the appropriate answer and in fact you may get better quality because some of those may run more frequently than would somebody operating a 47-seat bus, so you're right on that score. There are going to be some communities for which the traffic is just not sufficient to justify that kind of service.

Of course the other issue is one of connections, because if you're a small business running, say, a minivan service connecting to a community, you don't have a guarantee that you're going to get cooperation on things like through-ticketing, appropriate parking etc to

make the right kinds of connections with the main carrier. Those are solvable problems, but they are problems none the less, and I think they need to be addressed.

1720

Mr Colle: Thank you very much. You've presented a very objective analysis, and I think it's the type of analysis that is required in this discussion and certainly in this time of transition. I appreciate your input and I hope that you continue to have a role to perhaps guide the decision-makers in government in terms of what the impacts are.

The question I have is that the real challenge we have here in Ontario is that we have a fragmented industry, and given the fact that the industry is fragmented, the only way you're going to have a level of service in our smaller outlying communities and fares that are reasonable is that you have to have a certain degree of government intervention, because you don't have that one carrier, National Express, that you have in England, so how do you achieve that coordination if you've got full deregulation?

Dr Bunting: I think there are different types of government intervention. I once saw a list of about 20 different styles, running from encouraging people to getting in and doing it oneself. I think the role that government can play is to facilitate relationships between the smaller carriers and the majors, perhaps to fund the kinds of research the industry needs to do in order to define the kinds of infrastructure that it needs in order to provide the kinds of system functions that National Express provides as a dominant carrier. For example, smaller operators can't get into the business of supplying terminals, they can't get into the business of supplying, say, a province-wide reservation and information system, and governments may have an important role to play in that, but I'm very hesitant to say that government should be directly involved in coordinating relationships between suppliers of services in the marketplace.

I think that the regulatory model certainly helped a bit, because in fact there was a period during which carriers cooperated with one another, so that, for example, if I went into my bus station in Kingston, I could get information not only about Voyageur's services but also about Greyhound's or any of the other carriers in the province. Now, to some extent, that's beginning to break down, and that may be an indication of where we're going, but I don't think there is a basis for the kind of regulation that we've had in the past, and certainly what's happened with the market is not encouraging. In other words, we've had regulation; the market has declined quite precipitously.

Mr Colle: But is that equated to the industry or other factors? There's been a decline in bus ridership all over North America and it's not necessarily because of the regulatory structures. There's certainly car usage, demographic changes. Those are maybe more important factors than whether there's government regulation or not.

Dr Bunting: I think that's a fair comment except that the challenge of reviving your public transport system is not going to reside in protecting the regulatory system. It requires adaptation, creativity and change, and yes, I do think there is a government role. I'm not confident that we're necessarily going to get the right kind of govern-

ment role out of this at the end of the day, but I don't think regulation is going to solve the problem.

Mr Colle: No, but the thing is to try and achieve some way of cooperative, innovative partnership with government and the industry to try and achieve some kind of progression towards providing better service at lower cost and maybe maintaining profit levels at reasonable levels.

The Chair: Good statement. Thank you, Mr Colle.

Mr Pouliot: Dr Bunting, we're certainly most appreciative, my colleague and I, of your remarks. We are both from northern Ontario, and I know you attempt to be so terribly consistent, and we like the analogy, the parallel with Great Britain, with England in this case. If we were to speak of government interference and be equally consistent, we would remind ourselves that GO Transit recoups as an objective close to 70 cents on the fare box. The government pays 100% of rolling stock. TTC, right here in Toronto, recoups 68 cents. That's during very, very good years. Then the citizens, the taxpayers of Toronto and the taxpayers of the province join forces and they split the remaining 32-cent shortfall, and the government, the people pay 75% of rolling stock. You can take these figures quite close to the bank, I know of, which I'm comfortable with these, which I'm talking about.

I need your help. The population of England is 56 million, 57 million or 58 million. Is it in that neighbourhood? Could be one of the three? The population of Ontario is closer to 11 million at present. I see with some comfort that the 160 kilometres — and that's where in my humble opinion the analogy starts. I'll put it to you this way. In my riding, there are 33,000 people and we are the size of Germany. We try to find the situation that fits us, and there's an acquiescence, yes, when you are a small community and it's not your role, I don't appreciate, it wouldn't be fair to say it, but you chose to live there, but nothing can be lost if you don't have it. I guess you don't miss what you don't have. So even if I tried to say, "Well, how many?" to make it relevant, if we were to go 100,000, for us it's a lot of people. There are over 800 communities and we know the size of Toronto, Ottawa, London and then you start Windsor, Sudbury, maybe, shortly Thunder Bay, then you start really searching, once you pass the first dozen, that 90% of the communities have less than 10,000.

But my question is as follows: What did you factor in? We know that because of the changes there, the intercity bus has been, if not in disfavour, the numbers have been decreasing. Why the comfort and the latitude, with the highest of respect, Dr Bunting, that in the final analysis, we will have one giant operator, that by whatever ways we'll have eliminated, when we hear and will hear of people who say: "Thank you very much. I'm very comfortable where I am. Just tell me what the rules of the game are, keep the playing field level and I will do it." What would you answer to those presenters, people that are doing that for a living? They're the experts in the field.

Dr Bunting: Let me deal with the question of the single operator, because that came up before in the earlier comments. Obviously there are monopoly concerns when that sort of thing occurs. I think there's reason to be concerned, particularly if there isn't a good alternative. In

Britain there is in the case of British Rail. My reason for thinking that we will end up with a single operator, at least in southern Ontario, is that as soon as somebody figures out how to provide the system in the way National Express did, they will find themselves attracting the customers, and they will have the advantage.

Whether you get the same story in northern Ontario is a different matter because clearly when an operator is looking for their profitable markets, they're obviously going to pick the main routes, Sudbury through west and so on. They're not going to go into the smaller communities.

Certainly in Britain, there is the other 20%. There are a number of smaller operators who deal in primarily local or commuter-type services, servicing London. There's a very interesting case between Oxford and London where there are two operators that are not National Express running head to head, and there is of course rural service, but of course the rural service is subsidized.

The issue I was trying to bring to the fore is the question of who is responsible, and it may well be in the north's interest, as it may well be in my own community's interest, to take a direct involvement to make sure that there are certain services that are of social significance or indeed economic significance provided.

The question for the government is always, should the province be involved in it, directly or indirectly or how? That really is a question that hasn't been answered.

I don't know how it's going to work out, but it seems unlikely that we're going to end up with half a dozen scheduled carriers surviving in a deregulated market. I really don't see it. I would even be surprised if we had two or three by the time we get, say, five or six years down the road.

The Chair: Thank you, Dr Bunting. I appreciate your taking the time to come and appear before us today.

1730

ONTARIO MOTOR COACH ASSOCIATION

The Chair: With that, our next presentation will be the Ontario Motor Coach Association, Brian Crow. Again, 20 minutes to use as you see fit, divided between presentation and questions and answers.

Mr Brian Crow: Mr Chair, members, my name is Brian Crow. I'm president of the Ontario Motor Coach Association. The OMCA represents bus companies, tour operators, bus suppliers. We have affiliate members that range from hoteliers, foodservice organizations, attractions and destination management organizations that sell to the motorcoach tour industry. We have members in every province and in 43 states. We have a total of 1,209 members.

Our membership is very diverse. The interests of those members that supply products or services to a tour company are different from the interests of the tour company. The interests of the tour company are quite different from the interests of the bus company that supplies them charters.

Even within the bus operator membership of OMCA there is diversity. Some bus companies operate scheduled services with or without BPX. Some operate charter services, others tours, others contract municipal transit

services, some operate commuter runs and some operate contract services.

Bus company members in our association vary greatly in size. We have the largest bus operator in North America — it operates 30,000 vehicles — and we have a one-bus operation affectionately referred to as a mom-and-pop operation. The needs of these bus operators vary greatly. The needs of a large carrier are significantly different from the needs of a small carrier, so with economic regulation, our opinions vary significantly. The opinion on economic regulation is not unanimous.

In the 1920s, the Ontario government chose to regulate our industry. They created regulation in the hope of creating stability in the industry to better serve the public. Over the years, the Public Vehicles Act has been amended, but generally on a relatively minor basis. The principles that applied to the initial economic regulation still apply today.

Our industry has worked and invested under these rules of economic regulation. The industry has accepted the bargain which sees the higher-density routes and higher-return services cross-subsidize services that are more remote or more rural in nature and that are unprofitable. This service to the public was the industry's end of the bargain. In return, the industry received a stability gain through a regulated market.

Over the past five years, OMCA has tried to get our members to read, shall I call it, the writing on the wall as it applies to economic regulation. There is a global movement towards deregulation. Other transportation sectors, as well as other industries, have been deregulated.

NAFTA discussed deregulation. The federal government has convened a Canadian Extraprovincial Bus Task Force to look at deregulation of the industry, and the federal government has indicated its preference for deregulation. We have to consider that direction.

In 1993, OMCA wanted to find out what our members thought, so we hired Professor Richard Sobberman of the University of Toronto, who surveyed our members. Conclusion: The vast majority of our members wanted to retain economic regulation, but the vast majority of our members did not think the existing system worked.

In 1995, we engaged the service of Dr Mark Bunting, whom you just heard, to do a more in-depth survey of our operator members. Dr Bunting found that most of our members prefer continued regulation but at the same time do not support the status quo. In particular, licensing enforcement processes could be greatly improved and their cost reduced.

Our members also expressed concern that while they are not opposed to competition, outright deregulation could compromise safe operations and would greatly diminish the role of Ontario carriers faced with unfair competition with out-of-province carriers. Many of our tour operators — some operate buses, some don't — are in favour of deregulation so that they can get better prices or better service.

In August 1995, we met with the Honourable Al Palladini, Minister of Transportation, who indicated and made it very clear to us that deregulation was inevitable and it was a matter of deciding when. Consequently, our

operator membership met, discussed this direction and approved a proposal to phase in deregulation over a three-year period. The proposal was submitted to the Ontario government and it was not accepted.

Again in November, our operator membership met and discussed the issue of deregulation and expressed, among other things, the following concerns: harmonization with neighbouring provinces; time to adjust for deregulation; effective enforcement in the interim period; a fair and consistently applied system and that it be cost-effective.

With that, we developed another position that was approved by the majority of our members in February 1996. That position, in most respects, reflects Bill 39.

When it became apparent that the government would deregulate our industry, we believed we only had three options: outright deregulation immediately; maintain the existing system until deregulation; or develop an interim regulatory system as similarly proposed in Bill 39. We were not in favour of outright deregulation.

There are many in our industry who believe the existing regulatory system is on a slippery slope to a deregulated environment. The existing system has seen reductions in scheduled service. It has provided for a huge influx of Quebec-based operators into the Toronto market; for example, 50 to 60 Quebec operators at Pearson airport and only seven or eight Ontario carriers.

The existing system has antiquated wording in some licences which makes it impossible for proper interpretations, understanding and enforcement of these licences, and consequently enforcement has suffered.

Another example is a carrier that has a line run licence from Drayton to Kitchener, but got charged for picking up in Waterloo on his way to Kitchener.

Why does OMCA support the passing of Bill 39? It is our understanding this is not a deregulation bill. We support it because we think it will provide the Ontario government time to harmonize the regulatory environment so that Ontario carriers are not discriminated against by other provinces.

We are in favour of it because it will provide the Ministry of Transportation time to implement safety and insurance standards that ensure continuance of the excellent safety record of our industry. It will provide the industry time to adjust to and plan for open competition at some point in the future and, very importantly, it will create an environment where enforcement will be easier and more effective.

It will assist the public, in that carriers will have to provide 90 days' notice of termination of service or 30 days' notice for major reduction of service. It will require carriers to assist in finding replacement service if they decide to discontinue a service.

It will provide a more streamlined application process.

The longer the industry is left hanging, the harder it will be for our industry. Many carriers want to get on with it so they can make business decisions either to reinvest in the industry or to remove themselves from the industry.

In summary, it is our opinion that defeating Bill 39 will result in de facto deregulation of our industry. This is our belief because the existing regulatory system, without a commitment to and funds for enforcement by government, will in fact be deregulation.

There need to be rules, but it's important that all carriers know the rules and abide by them. Passing Bill 39 provides an interim period when carriers know the rules, the rules for now and the rules after January 1, 1998, and can be prepared for deregulation. It also provides for enforcement of these rules. Also, importantly, it allows time for the industry, along with government, to deal with issues such as safety and harmonization.

We ask that you approve Bill 39. Thank you for your time.

The Chair: Thank you, Mr Crow. You've allowed us three and a half minutes per caucus. The questioning this time will start with the official opposition.

Mr Colle: Mr Crow, just a question of interest. Do any Ontario operators have a licence to operate out of Dorval? How many licences would there be?

Mr Crow: I believe there are two, whether it's Mirabel or Dorval. The other problem is there's two; one's international and one's domestic. At Pearson it's all the same. I believe there are two Ontario carriers that have licences out of the airport in Montreal.

Mr Colle: The fact that there are two, is that just because our carriers don't have any interests there or is it because of the restrictions imposed on Ontario carriers by the Quebec government?

Mr Crow: There were restrictions imposed on Ontario carriers. Up until just recently you had to be a resident of the province of Quebec before you could get a licence in Quebec. We worked on that restriction and I think it was removed six months to a year ago.

Mr Colle: So now you can apply for a licence if you are an Ontario-based carrier and not a citizen?

Mr Crow: Correct.

Mr Colle: Do you think that will open up opportunities for other Ontario companies to seek licences in Quebec?

Mr Crow: A couple have already applied. Their applications are in process, but I don't believe there will be anywhere near the neighbourhood of 50 or 60 applying or obtaining licences in Quebec, because you still have to obtain it. There's still a PNC, or public need and convenience, contest there.

Mr Colle: So there's still going to be some difficulty obtaining those licences. Do you see that as an ongoing problem, despite the fact they've changed some of the rules?

Mr Crow: It will not be easy to obtain licences in the province of Quebec anywhere, airports included.

1740

Mr Colle: Would it be profitable or viable, do you think, for Ontario companies to get into Quebec? Is there the kind of market there that could benefit Ontario carriers?

Mr Crow: There's certainly a market there. There are certainly trips that come in from Europe and Asia, although I believe Pearson is the predominant airport where the most business is. Consequently, we're getting that competition from those Quebec carriers.

Mr Colle: I think you've given a pretty good rundown of the juxtaposed positions and problems with bus deregulation, and there are some concerns. You feel that Bill 39 essentially gives you an opportunity to iron out some of the problems the industry may have over the

next couple of years before deregulation comes about. As you said, there are some concerns that deregulation may impact negatively on some of your members.

Mr Crow: Absolutely. As I said, we've been operating under a set of rules for 60 years; now that the rules are changed. We need some time to work with government to make sure, as Mr Pouliot said earlier, we have a level playing field between non-domicile and domicile carriers.

Mr Colle: That would be the biggest concern you think your members would have, basically that level playing field. Of all the other concerns they have about deregulation, is that the one sticking point that would do the most damage if it wasn't corrected?

Mr Crow: As I said, our industry is very diverse and there are a lot of different opinions. It affects different carriers differently. If you're operating a charter market in Toronto with a whole bunch of competition now — if we've got 50 Quebec carriers out of the airport, what's it going to matter if there are 51? That is a little different than a carrier operating out of North Bay, where there are one or two competitors. He may face another 10 or 15 competitors.

Mr Colle: So it depends on whether you provide line service or charter and then —

Mr Crow: That difference as well, yes.

Mr Pouliot: Mr Crow, I want to take you back to the HighGrader magazine that has a picture of people who work in the mining sector. It says: "In their 1995 brief to the intercity bus task force, the OMCA predicted that once deregulation came into Ontario" — Mr Crow, let's make no mistake about it, if I may be bold — may I?

Mr Crow: Go ahead. I notice the article is entitled Cheap Shot. Is that something I should be concerned about?

Mr Pouliot: No. You should be more concerned about my having immunity at the committee and you not having it.

A year and a half from now, whether you like it or not, the minister is coming in with deregulation, period. You can take that to the bank and cash it, and it won't bounce; that's what it says.

Your brief says, "When it became apparent that government would deregulate our industry, many in our industry believe that our options are limited." That's what you're saying yourself, so you have some degree of acquiescence.

At the bottom of your page 2, you say, "...provide the Ontario government time to convince the federal government and other provinces to harmonize the regulatory environment...."

We know the very recent position, just a matter of a few months back, of Manitoba — quite adamant. Quebec has other things to look at. They won't move. In a year and a half, in my opinion, it's not likely that there will be enough powers brought forth to lean on the province of Quebec so they will change their mind — to please whom?

It's highly likely that the situation will remain the same. If it were so, would your membership be much more concerned? I'm not talking about regulatory changes that could be done to regulation amendments; I'm talking about the introduction of deregulation, because that's what this bill is all about. It just gives a

little time for the transition. A year and a half from now, you wake up one morning, and that's what it is. How would your membership feel if there was no harmonization between Manitoba and Ontario in the next year and a half?

Mr Crow: The majority of our members would not like that at all. We are concerned about deregulation. We're concerned about the federal government announcing its plans to deregulate. As you heard earlier today, if the federal government deregulates, there's not an awful lot left of provincial regulation to deregulate. So we're obviously concerned with deregulation, whether it's now, whether it's by the province or whether it's by the federal government.

Mr Pouliot: Mr Crow, was that a cheap shot?

Mr Crow: No, but the article did say that, didn't it?

The Chair: Thank you, Mr Crow. We appreciate your taking — oh, a great afternoon I'm having. Mr Carroll.

Mr Carroll: Mr Crow, just a couple of things I'd like you to comment on. Are you familiar with this list that's being circulated around by the Freedom to Move group about the 170 locations they say will lose their bus service?

Mr Crow: I'm not familiar with that one, but I assume it's the same 170 that somebody issued a release on last fall.

Mr Carroll: Any comment on the validity of that claim?

Mr Crow: When that list came out, I contacted the carriers that I thought would be serving those points. The carriers indicated to me that it was not a list they had generated, that the companies had generated. I'm not sure where it came from — you'd have to ask the authors — but I was told it was not generated by companies, and it's the companies that make the decisions on what points will be served or not. They did not generate that list.

Mr Carroll: In his brief, Mr Parkin from the ATU said, "Regulation is essential to maintain a healthy competition." Would you care to comment on how you feel about regulation being essential to maintain healthy competition? It seems like a bit of an oxymoron to me. How would you feel about that?

Mr Crow: I guess initially I'd say the same as you: It seems to be an oxymoron. It depends what that regulation does. If the regulation forces a monopoly, then it's not competitive. If regulation allows an oligopoly, then you can have some form of competition. For example, you can regulate municipal transit, but it can be contracted out to the private sector on a bid basis and operated. You can have competition within a regulated framework, but I'm not sure in the context that he talked about it.

The Chair: Thank you, Mr Carroll. Again, my apologies. I'm always so mesmerized by Mr Pouliot's preambles.

Thank you again, Mr Crow, for taking the time to come and see us here today.

CANADIAN FEDERATION OF STUDENTS — ONTARIO

The Chair: Next up will be the Canadian Federation of Students — Ontario, Heather Bishop, chairperson. Good afternoon, Miss Bishop. Again, we have 20 minutes

for you to use as you see fit, divided between presentation and question and answer period.

Miss Heather Bishop: My presentation will be relatively short.

I'm sure you're all wondering what students have to do with the inner workings of the transit industry, and the answer is, very little. We got involved originally last fall with the Freedom to Move coalition when the original announcement was made about bus deregulation. A number of our students from the extreme regions of the province, from smaller communities, called in expressing concern that they wouldn't be having bus service in their communities and letting us know that this was one of the primary modes of transportation for them getting back and forth to school and to job interviews.

I've put some information in the package about the federation and how it works. Basically, all our policies are implemented and brought forward by individual members. So the reason I'm here is because individual members of our organization are concerned that they won't have access to transportation to get back and forth to post-secondary schools and to larger cities to jobs. Primarily these are students coming from the north, from remote communities like Kapuskasing, Hearst, Rainy River, all the ones up there who don't necessarily have access to air transport, don't have the finances to fly, and where rail service has been discontinued.

There are very few details in Bill 39 that we're concerned with. The notice period was the only one that stood out that we felt we should comment on specifically. In the bill it says "in accordance with the regulations," yet we heard the minister say in the House the 30 days and the 90 days. That was something we felt strongly about speaking out in favour of, being more specific with the 30 days and the 90 days. Students get a little bit wrapped up, especially at exam time, around Christmas and at the end of the year, and if they're depending on the bus service, chances are they're not going to buy their bus ticket a whole lot in advance. If there is only 10 days' notice and their route has been discontinued, they may be stranded at Christmastime because of the stress of exams and not a whole lot of planning. If there is 30 to 90 days' notice of a change of route or a discontinued service, that gives them a little bit more time to plan and prepare for that kind of thing and we don't have students stuck far away from home at key times in the year.

Just for interest's sake, we found that students tend to travel about five times a year, travelling back and forth from home to school: Thanksgiving, Christmas, Easter, reading week and one other time throughout the year, generally for a birthday or an anniversary. Students in general are having more access to cars than they had in the past, but again we found that for students from the north and students from smaller communities that's not necessarily the case, and a lot of them are very dependent on the bus service.

1750

Our concentration was more speaking today about deregulation, and I understand that it is more or less inevitable, but we have a year and a half until it comes into place so we felt compelled today to come and speak out about some of the students' concerns with deregulation and plant the seeds of a little bit of a question in

people's minds. Maybe before it happens there can be some more changes made that will ensure that smaller communities don't lose their service and students aren't sort of stuck out in the cold.

I've outlined in the brief very shortly some of the costs involved with post-secondary education. That may or may not be of interest to people, but I felt it was important so that people realize that students are facing a huge burden and are looking for the cheapest form of transportation, and in many cases the bus is it. So losing the service through deregulation and losing it in smaller communities could be devastating to a lot of students.

Safety is an issue that we're very concerned with. We've seen in a number of other areas things that have been deregulated. Prices go down initially and service looks really great, and over a period of time, through the competition to make more money, it gets a little bit more fierce and people start cutting back to make that profit. We're concerned that maintenance levels with the vehicles will be cut back, and that's certainly going to cause unsafe conditions not only for the driver and the passengers but for other people on the road. We're concerned about the training involved with the drivers. If unregulated companies don't have to follow specific guidelines for their drivers, we're concerned about the safety of passengers again and of people on the road, especially in the north with severe conditions in the winter.

The safety issue that comes into play that you'll notice in here which concerns me personally the most if service is cut off for students who don't have access to air or rail travel is common practice right now and one that concerns a lot of student leaders, and that's people accepting rides home back and forth from people they don't know. That's especially a concern for women. A lot of times there's only two people in the car. Our parents taught us not to take rides from strangers and people we don't know, yet students do it all the time because certain services aren't available to them. This is a concern, as is hitchhiking, for people from small communities if bus services are cut off in those areas.

Access is listed in here as well. It may sound a little bit farfetched, but there are a large number of students from smaller communities and northern communities that either don't have access to a car or a train or are intimidated by Toronto driving to come down here for job interviews in a car and who rely very heavily on the bus for that. So if the small towns are cut off, it could have something to do with their unemployment levels later on.

Some general concerns that Freedom to Move and other groups we have spoken with have around the issue of bus deregulation include the loss of jobs. There is concern, and I heard it mentioned a few minutes ago, about unfair competition from out of province if the harmonization doesn't happen and Ontario's not allowed to compete in other provinces. Students don't like to hear anything about potential job loss in any industry at this point. We're all hoping that jobs are going to flourish.

The other serious one is the GO bus service. A lot of students, especially in southern Ontario and the Metro Toronto area, are heavily reliant upon the GO bus service to get back and forth to schools and to jobs. Our concern

is that if deregulation happens and there isn't some kind of regulation put back into place regarding GO buses, there will be other carriers hijacking peak times and peak hours. Initially that's going to lower the cost for students. Ultimately it's going to cost people who live outside of Guelph and have to take that bus. It's going to cost GO Transit because they're going to have fewer riders. That costs the taxpayer, that service is going to result in decreased service for other people who use it. So that's one of our main concerns in the Metro Toronto area.

I said here that it's easy to criticize any legislation without coming up with alternatives, and I certainly don't claim to have any really great ones. If the industry is prepared to regulate and pay for the cost of regulation, as seems to be the case over the next year or so, we would be happy to see the regulation left in place. If it's not costing the taxpayer anything and it's putting some stipulations on the way the industry is run, that likely is going to make it safer for everyone.

The other option that we thought about was smaller buses, obviously for smaller routes, northern cities. You don't need to have the big 47-passenger bus. Varsity teams and schools have managed on smaller buses. You get what you need and you don't drive the big vehicles and obviously there's going to be some cost savings there.

Students are big ones for working out partnerships with people to try and save money, so perhaps there are businesses in communities or smaller companies that could work out some kind of agreement and some kind of partnership to make sure that people are still serviced in these communities and no one is left stranded.

We recognize that Bill 39 is not the deregulation bill specifically. That's not set to happen until 1998. Students, again, don't have a whole lot of place here discussing the detailed aspects of bus deregulation, but there are some concerns that we have with deregulation and we felt this would be the time to bring them up so that you have a year and a half to think about these and perhaps fix a few of the problems that you may not have considered yet.

Ms Shelley Martel (Sudbury East): Miss Bishop, it's a very good thing that you're here and it's more than appropriate that you've come here today to talk about this issue, because I think all members have to recognize again that while Bill 39, as the government purports, is only some minor changes that will help the industry, especially around what happens at the transport board, Mr Crow certainly made it clear in his last presentation that Mr Palladini does see this as the interim measure before we have full bus deregulation. There's no doubt about it. While some of the government members in the House have been trying to say the year and a half before we get to 1998 will allow the minister to study it, it's very clear that the minister has no intention of studying it. The question is, how fast are we going to get to it? I suspect if we could have done it full tilt right away he probably would have done that too.

Returning to the concerns that you are relating on behalf of students, what do you think this is going to do to access for students who are coming from rural Ontario and northern Ontario? Both Gilles and I, as we said earlier, represent a number of those small communities,

he more than I. Certainly, a lot of the kids who are living in those communities don't have cars. Their parents can't afford to give them cars. With their increase in tuition over the next couple of years, a lot of them are not going to be able to afford a bus ticket. What is access for them going to be like if probably the single source of transportation they now have in and out of the community is taken away?

Miss Bishop: We've seen a lot of access questions come up over the last little while, specifically around financial things and the rationalization issues that have been discussed about closing specific universities throughout the region. I think people in rural communities and extreme northern communities are sort of hanging on. A lot of them have succumbed to the fact that they're not going to be able to go away to school and are partaking in distance education programs. There are only a couple of universities in the province that offer distance ed to the extent that a student can complete an entire degree through distance education.

A lot of rural and northern communities are solely dependent on bus travel, many more than I expected until I started getting involved with this. I think it's cutting them right off, frankly. There will be some distance education through Laurentian, through Lakehead, but there certainly isn't the vast range of programs that a student should be entitled to if they're looking at post-secondary education. I personally don't think that it's value for the money. You pay pretty much the same for distance education or for going to the classroom and experiencing the whole experience. I think students in rural communities and in the north especially are being completely cut off from post-secondary education if their final mode of transportation is cut off.

Mr John R. Baird (Nepean): Thank you very much for the presentation. I have a quick question at the outset. I'm just reading that you represent 110,000 individual members across the province, you're a democratic organization, and the policies originate from the members. Just a question of process: When you have a policy, does it go through the student governments for all the 110,000 students you represent?

Miss Bishop: Generally. Individual policies come forth from students, either directly to the office or through their student union. Those policies then go to general meetings, where they're voted on by representatives from each of the schools, and then they go back to the student unions at the local campuses and are discussed there.

Mr Baird: Did your position on bus deregulation go through the general meeting?

Miss Bishop: It was discussed this past January at our general meeting, because we originally got involved in November with Freedom To Move. It was discussed at our national general meeting just to ensure that students across the country knew what was going on, and there was not a lot of discussion from other parts of the country. It was in November that students from the north spoke up most heavily and said, "We have to do something about this." It was discussed in January.

Mr Baird: But this policy, though, has been through all the —

Miss Bishop: Yes, it has been discussed at our general meeting in January.

Mr Baird: But more than discussed; this policy you're presenting, all the schools in Ontario —

Miss Bishop: Yes, these are the initiatives that were presented by people at our general meeting, so between January and June they all go back to student unions for discussion and they'll be discussed again in June. But these are the initiatives that came up from the students in January for interim policy.

1800

Mr Baird: But the student unions which you appended to your brief would have supported that?

Miss Bishop: Yes, they've all seen these.

Mr Baird: Great, thank you. Just a question with respect to GO Transit, because it is something that I am learning more about because I'm not from the greater Toronto area. On the last page of your brief, with respect to general concerns, you mention that you believe many students are dependent on GO bus service. "If the industry is deregulated, there will be independent companies trying to capture the peak routes and times," which would initially result in lower fares but might see less revenue and then see GO abandon them.

We heard from a previous presenter, with respect particularly to an Uxbridge-Toronto line, which includes Stouffville and Markham, that they were actually able to go in and then when GO pulled out, they were actually able to go in and make up those lines. What would lead you to think that would be the conclusion with respect to GO Transit service?

Miss Bishop: It was just sort of a general overview that we had of people coming in from — this was Guelph that brought up this one because they are very dependent on the GO service — just a general feeling that if there were competitors coming in — the service from that area is heavily used right now and the buses are full, they claim, when they come in.

There were concerns that if competitors came in, originally they would offer lower prices and the service coming into the city would be the same, but the service going outwards from that area, people getting into the smaller communities that are not the major runs, I think obviously — we've seen the way the government works. If the GO service is losing money, we're not going to keep funding it when there's a private company out there that can do the main routes just as well.

So our concern wasn't that the main routes would be lost, it was that the smaller routes, the more rural routes that didn't necessarily come into a bigger city — they operate obviously at a deficit already, so if the major lines begin to operate at a deficit, then those smaller communities are certain to lose.

Mr Baird: But on principle, if a private operator could come in and replace GO Transit and provide an approximate level of service, would the Canadian Federation of Students have a problem with that?

Miss Bishop: Provided it still served the smaller communities at a similar price, then we would support it. What we're not supporting is a private industry that would come in and take over the service and either cut

out communities that students are currently in right now, that they need the service, or any kind of dramatic price increase. Students are strapped right now and any kind of increase in anything, even transportation, is going to limit their access to education.

If there's a private company out there that can offer the same kind of service at the same price servicing the same communities and the same numbers without the government subsidy then I would encourage the government to go out there and get them, but I'm not convinced that those communities —

Mr Baird: But it would have to go to all of them —

The Chair: Thank you, Mr Baird. Moving to the official opposition.

Mr Dwight Duncan (Windsor-Walkerville): You may have answered this already. I apologize. Do you have any rough idea about how many students actually use bus service in Ontario?

Miss Bishop: It varies from community to community obviously. As I mentioned, the people in Metro and southwestern Ontario rely more heavily on the GO service than they do on Greyhound or the northern services. There are a large number of northern students. I went to Laurentian and about 25% of the students at Laurentian came from the northern communities and probably 20% of those relied on their parents to drive them, which got less and less over the years as their parents could take less time off work obviously to come and pick them up for whatever, and they depended heavily on the bus. My comments were relating specifically to the north. Students in southern Ontario generally have access to other forms of public transit, but northern students are heavily reliant on this.

The Chair: Thank you, Miss Bishop. We appreciate your taking the time to come and see us here today.

CAN-AR COACH SERVICE

The Chair: This moves us along to Can-ar Coach Service, Ray Burley. Mr Burley, good afternoon, having soaked up the ambience all afternoon back there.

Mr Ray Burley: Yes, wonderful. It's not very warm in here.

Thank you for the opportunity to address this standing committee. My name is Ray Burley and I'm vice-president of Tokmakjian Group and I'm also a director of the Ontario Motor Coach Association.

This evening I'd like to address two issues which are critical to the future of the Ontario motor coach industry particular during the runup to full deregulation in 1998.

Before I get into the detailed comments about the impact of Bill 39 on our industry, I'd like to take a few moments to tell you about the Tokmakjian Group and my own experience in this industry.

Tokmakjian Group is a privately held company specialized in the transportation industry. Its operations include Can-ar Coach with about 80 highway coaches; SN Diesel which services and rebuilds all major brands of diesel engines; National Refurbishing, which rebuilds highway and transit buses; and Toronto Truck Centre, a Volvo heavy truck dealership. These operations are all

leaders in their respective fields and in all they employ about 350 persons.

My own experience in transportation stretches back more than 25 years, beginning with a family-owned bus company which was typical of the bus industry in this province for many years. Later experience includes sale and servicing of construction equipment and after-market operations for heavy trucks. Most recently, before joining Tokmakjian Group, I was vice-president of sales and marketing for a national distributor of heavy trucks.

I mention this experience because it gives me a unique perspective on road transportation in Ontario. The bus and trucking industries are precisely the same, but there are enough similarities to allow me to make some observations which should be relevant in your consideration of this bill and how it will affect the industry.

The first concern is to ensure a level playing field for motor coach competition in this province. As Brian Crow has pointed out, our industry holds differing opinions on whether deregulation is a good idea or not. Regardless of these opinions, we all recognize that deregulation is a fact of life and that deregulation will benefit Ontario consumers.

Speaking for the Tokmakjian Group, and I believe for most members of the Ontario motor coach industry, we aren't afraid of fair competition, but the emphasis is on fair. As the government establishes a deregulated bus industry in this province, it is important that Ontario bus operators not be placed at a competitive disadvantage compared to their colleagues in neighbouring provinces.

Deregulation in Ontario must be harmonized with parallel action in Manitoba and Quebec. Deregulating point-to-point service in Ontario will certainly invite many new competitors from outside this province. To date, there's no indication that Ontario operators will have the same access to these competitors' home markets.

To permit new competition from out-of-province carriers without ensuring equal access for Ontario carriers in these competitive home markets is to place the Ontario industry at a significant disadvantage. Ontario would become a deregulated oasis while our companies would remain barred from working in other provinces. These competitors will be able to deploy their buses and thereby spread their costs over a much broader business base, and this is a big advantage.

As Ontario legislators, you will recognize that the regulatory environment in other provinces is beyond your realm of responsibility. However, Ontario may well lose skilled jobs and an industrial tax to other provinces if our industry suffers because other provinces' bus industry is provided with a significant competitive advantage at our expense.

I'm not recommending that the Ontario bus industry be actively protected by legislation or regulation. I am suggesting that in deregulating our industry you give full and careful consideration to balance, fairness and a level playing field for Ontario business. I believe your analysis of this situation will lend you to conclude that deregulation in Ontario must be harmonized with neighbouring provinces.

The second issue I want to address with you this evening is even more critical, and that's the importance

of maintaining high safety standards in the Ontario bus transportation industry.

With more than 25 years' experience in this industry, I can assure you that Ontario's bus safety standards are higher than any other jurisdiction in North America. We can take our buses and drivers anywhere with confidence. In contrast, Ontario's standards cause operators in other jurisdictions serious concerns about their ability to measure up.

Secondly, Ontario bus operators are acutely conscious of the responsibility of carrying human cargo. Generally we don't view minimum safety standards as maximums for daily operations. We're always looking for ways to make operations safer. Because we depend on public confidence for our livelihood, the highest safety standards are both morally imperative and sound business judgement. Our record over the road is very good and it reflects this deep commitment to safety.

Yet my experience with deregulation of the trucking industry leads me to be concerned about bus safety in a highly competitive deregulated environment. That experience tells me that routine maintenance is often delayed and sometimes cut out entirely to cut cost and boost hours and service.

Recently we had an out-of-province registered bus in our Toronto service shop when it broke down. In addition to being several years older than the oldest buses still in general service in Ontario, this vehicle had at least five gross safety defects. The problem included broken glass, bald tires and one tire on the point of a blowout with a bad sidewall bulge. This bus shouldn't have been on the road anywhere, let alone in Ontario. We informed the operator that if this bus was left in our shop in that condition, we would report it immediately. The contrast between this bus and an average Ontario bus would have been obvious even to the casual observer. This isn't a very complex business.

1810

Our industry has been told repeatedly that safety isn't being deregulated, but I have to express some doubts. Certainly the bus I described was a horrifying deviation from most currently running on Ontario roads, but let me make two points to put this example into better perspective.

Firstly, the bus I described already slipped through the system, both where it began and the trip in Ontario. Nobody from the Ministry of Transportation or the OPP caught this bus. It just turned up in our repair shop and while there will always be exceptions to general rules, it would become harder to catch the exceptions, not easier. It will become harder to catch the really bad vehicles because while the number of coaches on the road will remain about the same as today, the number of operators is expected to increase dramatically. It's comparatively easy to inspect 100 buses operated by one company; it's much harder to inspect 100 buses operated by 50 or 100 small companies.

It's also fair to suggest that small operators rarely have the financial resources to invest in new vehicles or in the most modern diagnostic and repair systems. Older vehicles aren't inherently bad or unsafe, but they do take

more maintenance than newer buses if they're to be kept in safe, productive use.

Unfortunately, a deregulated operating environment with insufficient resources for safety and enforcement is unlikely to create the right conditions for a high standard of safety throughout the fleet.

The second reason for concern about this bus and about safety in a deregulated bus industry is the directly comparable experience of the trucking industry after deregulation. The Ontario bus industry has not experienced the high-profile accidents which have beset the trucking business in recent years, at least not yet. Evidence from the trucking industry after deregulation suggests that maintenance and safety issues will grow. That suggests to me that buses, such as the ones I saw, will become more common in a deregulated environment.

Accidents can occur both in the large fleets and the smallest operation and both be spectacular and tragic in their result. In addition to the immediate human cost, any significant increase in the perceived frequency or severity of bus accidents could badly damage public confidence in bus transportation generally. That will more than cancel any consumer benefit obtained from increased competition, as well as delivering irreparable harm to the industry.

It should also be pointed out that there's a very large international market in Asia, Latin America and other regions for used buses. Because of the high standards to which they've been maintained, Ontario buses bring better prices and hold their values longer. That business would also suffer if Ontario's bus safety standards were relaxed.

To maintain both high safety standards and a high degree of public confidence, our industry and our association recommended that any carrier operating in this province be required to meet our current high standards. One way to ensure the standard would be to have applicants pass a safety audit prior to start of operations instead of within six months of startups as is currently proposed.

In addition, our industry and our association support the imposition of a high minimum standard of liability insurance coverage. Many members of the OMCA have invested in more insurance coverage than mandated by regulation, and some carriers currently operating in Ontario, perhaps including the operator of the bus I described, have insurance coverage which is only comparable to that of a private passenger car. In our view, that's totally irresponsible.

While we acknowledge there's a degree of economic protection for Ontario's established motor coach carriers in the imposition of high minimum standards of liability insurance, we believe that the enhanced public protection outweighs any reduction in the potential competition in the marketplace. Our experience over more than 60 years is that safety is good business.

Let me sum up briefly before I respond to your questions. Regardless of the collective and individual opinions on deregulation, Ontario's motor coach operators are preparing for deregulation which will increase competition to the benefit of the Ontario consumers.

In shaping the environment in which we will operate for the next 20 months, we ask you to consider these two important points:

Firstly, we ask that you ensure that on opening the Ontario bus transportation market to increased competition you do not provide potential competitors with access to this market which is not reciprocated with access to their markets for our operators.

Secondly, we ask that you maintain Ontario's long-established high standards for bus transportation safety by ensuring adequate resources for enforcement of safety standards, by maintaining current high vehicle and operator safety standards for any new interests, and by imposing high minimum standards of liability insurance for all bus operators in Ontario.

Bill 39 provides the time to address these issues and to ensure that the Ontario motor coach industry can continue to provide safe and productive service for the people of Ontario.

As the environment in which we operate begins to change, to keep pace with changing needs of our consumer, we ask that you consider the importance of fair competition for the industry and high safety standards as a key element of a successful system of bus transportation. These are important to both our industry and to the people we serve.

Mrs Lillian Ross (Hamilton West): Thank you very much for your presentation. In reading your brief, on page 2, you made a comment that bus deregulation is the way of the future. I wonder if you could tell me why you would make that statement.

Mr Burley: It's very difficult to operate in this global market that we operate in and have regulated environments. We are going to be confronted with that, like it or not, and if we're going to be successful in this globe, we will be deregulated in most, if not all, things we do.

Mrs Ross: Carrying on with that statement, you also say that deregulation will offer Ontario bus transportation consumers important benefits. What benefits do you see for the consumers?

Mr Burley: Hopefully, lower prices should arrive from that. That's what you typically get in that kind of competitive environment. You continue to provide the services. It always finds its optimum level and the customer usually wins in that benefit.

Mrs Ross: Do you see that competition would also provide better service?

Mr Burley: Conceivably it could in certain areas. You never know. When you're in a regulated environment, you don't know what a deregulated environment does until you step into it. I would use the truck industry. Having lived through the truck deregulation, there was a lot of bruising; I still have a lot on my back. However, at the end of the day, I think it was a healthy environment for the consumer. There are a lot of excellent companies that were brand-new companies that came out of it.

Mrs Ross: I want to talk to you a little bit about safety. You've addressed it in several areas. Safety is a priority with the Ministry of Transportation. If safety issues were addressed and Ontario's high safety standards

were maintained and perhaps even enhanced, would that alleviate your fears with respect to —

Mr Burley: It certainly would help.

Mrs Ross: You know of course that recently the ministry has had several truck blitzes where they've pulled trucks over and inspected them for safety, maintenance and all that sort of thing.

Mr Burley: Correct.

Mrs Ross: I think that addresses the safety issues. As I say, the ministry's very concerned about safety. I think that I heard — I'm not sure if this is true; well, I know this is true — that harsher penalties are going to be brought into force for unsafe vehicles. That would also address that problem.

Mr Burley: As long as the enforcement is there on a continuous basis for that large volume of people who will be playing in that competitive market. I've referred to one bus which I've physically seen in our shop — because we cross so many lines and we repair buses and we repair engines — and you would have been appalled if you had seen this piece of product that was in our shop. The only reason it ended up there was that the brakes failed and the driver had called back to the office. This was an out-of-state product and we wouldn't release it until they gave us a purchase order to bring it up to safety standards. They didn't really want to do that, but they also didn't have any option. But had you been a passenger or had to have been a passenger on that bus, you would not have been a very happy person from a safety point of view. It was really surprising how that thing even hung together.

1820

Mr Colle: It would be very interesting to see how the enforcement's going to take place when they're just about to chop 1,200 people in the Ministry of Transportation. You just can't have it both ways. By the way, Mr Burley, I think your presentation was very incisive because it really focuses in on the issue here, and that is safety. In essence, the deregulation of the trucking industry has been a disaster from a safety perspective because people have been able to enter a market to make that fast buck — I'm not talking about the good operators in Ontario. They've taken advantage of the good operators by cutting costs on safety. They've done irreparable damage to the trucking industry, and if the government doesn't learn by that lesson that you just can't deregulate and forget safety —

You have a government that has said that come January 1, 1998, it's going to deregulate. Now, if I were a Quebec trucking firm or if I were the Quebec government, why wouldn't I just wait the Ontario government out, let them go through this period and, come January 1, they've got the whole Ontario market? They've already said they're going to deregulate, so why should Quebec move to level the playing field?

Mr Burley: You stated why they won't move to deregulate it. That's why we're asking for you to put as much emphasis as you can on that situation. I don't think we're unrealistic. As I stated in there, you only have so much capability, but if I were sitting on the same side of the fence, I would wait it out as well.

Mr Colle: Yes, because from my reading of it, I think what the government had intended to do was deregulate April 1.

Mr Burley: Yes.

Mr Colle: That was their intention. They realized that they hadn't looked at the consequences and, all of a sudden, they changed gears dramatically in reverse. I think they burned out the engine in doing it. What do we do at this point now, when we've got a government that's already played its card and has said, "We're going to deregulate, come hell or high water, on the 1st because ideologically it's the best thing to do"? What recommendation can we give them to say, "Hey, wait a minute, here's what you can do to get out of this mess, with Quebec sitting there waiting to pick off the rest of the Ontario industry"? What can they do to get out of that mess?

Mr Burley: I think the key issue then falls under the safety side of it. As long as everyone knows that in this deregulated environment for us operating in Ontario — and we appreciate the fact that we have 20 months to build up to it, that it isn't a complete drop on us, to try and prepare as businessmen as best we can — the safety and the insurance become the key issues in this thing. We need to make sure that everyone has proper and adequate insurance in case that accident does happen, that the passengers, or at least the survivors, in those situations are taken care of. Because I believe many operators in those situations, in going back to the trucking side — they call them brokers for more than one reason. You'll see that, as I said, in this particular bus that I witnessed myself in our shop. If I have to compete with that, it's very unfair. For what it costs us in overhead to operate the shops, to maintain that product, we also — you believe that people are intelligent, the consumer you're dealing with at large. Listening to the speaker before me being concerned about the students, obviously people are aware of those things and hopefully they won't step on those types of vehicles and support them, but let's face it, in this economic climate it's pretty difficult.

Mr Pouliot: I too find it passing strange that on the one hand you lay off 1,200 people from the Ministry of Transportation, yet you factor in that when you have a deregulated environment with the trucking industry — we've literally seen the wheels fall of the trucks — safety will all of a sudden become a high priority by virtue of a decree. It doesn't add up; in fact it's contradictory. Just as much as a safety and employment issue, and I'm seeking your expertise, it is not likely in the next year and a half that Premier Mike Harris will achieve success in convincing Premier Filmon and Premier Bouchard. If you were to call the people who hold book, the book shop, you can get pretty good odds on that. In fact, I'll give them to you; no, I won't, because it's illegal.

In your opinion, how many jobs would be impacted — I'm talking about women and men, Ontarians — if things remain the way they are, that in a deregulated environment Manitobans and Quebecers are entitled to come and get a licence while we cannot reciprocate? That is the real climate we are facing in a year and a half, as true as we're sitting here today. What

kind of impact will it have on Ontario jobs and therefore Ontario companies?

Mr Burley: It's very difficult for me to put a number on it. Brian, you may have a thought about that as a number. It could be in the thousands, literally. There's a tremendous number of people employed in this industry, from ticket agents to the mechanics who repair them. It could be a dramatic number if indeed it's not an equalized playing field. I'm concerned about other provinces; I'm concerned about nearby states.

Mr Pouliot: I need your insight. I just cannot shake the safety aspect. Please involve me in your own world. Everyone professes to — I mean, I don't meet people who don't like their mothers; I don't meet people who don't preach family values; I don't meet people who don't preach safety. But what happens in the real world when competition is such? How does it happen that safety does not necessarily take a back seat, but in orders of priorities it might not be as catalytical, as important, as sacred as it would be otherwise if you have more latitude? How does that happen?

Mr Burley: Absolutely, you're correct. It doesn't take place. I mean, that's the first thing to go. It's expensive. If you're competing in an environment and your profit is diminishing, you only have so many places that you can take that out of if you're going to stay in business. I would use probably, on the truck side of it, a perfect example of a situation that we have in the province of Ontario — I'm not sure whether it has been rectified yet or not — with a carrier from another province that I witnessed previously. Prior to deregulation in the truck industry, it was very profitable and maintained very high standards within its fleet. Yet not less than eight months ago they were in a tragedy type of situation with a vehicle hanging over the side of a bridge in Ontario, and I'm looking at a vehicle that shouldn't even be on the highway. I know the government is still dealing with that particular issue. That's what happens. If you do not pay attention to safety, that's what will happen, because it has to come from someplace.

The Chair: Thank you, Mr Burley, for appearing before us here today and making those comments. I appreciate it.

TRAVEL VENTURES CANADA INC

The Chair: Next up is Travel Ventures Canada Inc, Mr Larry Hundt, president. Good afternoon, sir.

Mr Larry Hundt: Good afternoon, Mr Chairman and members of the committee. First of all, I'd like to thank you for the opportunity of speaking here today. With the limited time we have, if you'll excuse me, I'm going to read my presentation.

Firstly, to tell you a little bit about myself and our company, I've been involved in the bus business for 27 years, in all facets of the bus business. I've been involved in bus passenger service, charter service and, in more recent years, the bus tour side of the business. Presently, along with my wife, I operate a company called Travel Ventures. We probably rank ourselves as the second-largest bus tour company in the province serving the Ontario public.

As far as the changes that are being proposed to the Public Vehicles Act are concerned, I certainly have a number of things I'd like to point out. It's very troubling for me to see the indecision and confusion that the current government has created since taking office, keeping in mind that it's very hard to make decisions about purchasing half-million-dollar motor coaches when you can't determine from one month to the next whether you're going to have regulation or not. I applaud the present government for moving in the direction of deregulation. It's something that should have been done many years ago, in my opinion.

One of my biggest concerns is that presently, with this legislation, no allowances have been made to make this a meaningful transition. We're going from 60 years of a regulated system that has fostered a very conservative and non-competitive industry to a sudden change to a free market environment.

1830

Many of the older complacent companies will not survive a sudden change to a free, open market environment. There should be a period of adjustment and transition, in my opinion. The new legislation does not serve the industry well in this transition, if there's no relaxing of these entry requirements.

There has been, in recent years, one area of growth in our industry that comes from a huge influx of international travellers coming into our country, because of the weakness of our currency. There are really only about six bus carriers serving this market, and they simply can't handle the huge influx of these travellers. In 1994 they banded together and fixed prices, passing on rather large increases, some as much as 35%, to the travelling public without very much warning.

Let me tell you that the vast majority of the bus operators in the province are anxious for deregulation, in my opinion. I've spoken to a lot of the smaller carriers who feel that way, because they look upon this lucrative Toronto market and all of this international business that's coming into the city and feel that they can provide some of the service that's necessary to serve these people.

One of my biggest concerns about the new legislation is that it gives enormous power to the OHTB board member without any appeal process or ability to challenge his decisions in the courts. This person also is going to have to be a very good magician to look after the multitude of licence applications and rule on the many enforcement issues that are going to be put before him. There has been no consultation with the bus tour industry whatsoever in the formulation of this legislation.

The Ontario Motor Coach Association, unfortunately, just represents the bus operators, and not the tour operators. The bus tour operators have been forced into hiring buses over the years from a very limited number of bus companies, many of which are often direct competitors in the tour market. Our company has spent hundreds of thousands of dollars over the years to develop innovative tour programs, only later to expose these ideas to bus companies that can take these ideas and customer lists and use them to compete with us directly.

When the trucking companies were regulated in the past, a large percentage of the business was their ability

to apply for special licences to serve specific customers. This type of name-user application has not been looked upon kindly by the OHTB in regard to the bus side of our industry, and really, quite frankly, should have been.

The PV Act restricts bus companies, insisting that 75% of their passengers have to come from a particular licensed area. This is one of the most restrictive, unrealistic and unworkable regulations that exists in our industry today. Our company and many others are constantly breaking this law because there simply is no company that can work under this regulation.

All too often, we underestimate the impact tourism has on our job growth potential and its economic impact. The bus tour market contributes over \$1.6 billion to the Canadian economy. Every night a tour comes to a community, it leaves behind \$6,500 to that local economy. The current regulations have stifled the growth and potential of tourism in our country.

A great deal of discussion will ensue over the next few months about the future of our industry. Greyhound has been leading the way, lobbying the government and certain special-interest groups, talking about the loss of rural mobility. I think it would be wise to look at Greyhound's history and have a good look at their company just to see what their contribution to the loss of rural mobility might be. They have dropped service over the years to such a point that now they serve only our major corridors. They have all the gravy.

Why should they be left with only the best routes in this country? Why shouldn't they too accept some of the responsibility for moving some of the people in those rural markets? I might also ask why the cost of rural mobility is shouldered by the smaller bus companies that, in turn, have to pass the cost on to the charter and tour passengers.

The Ontario government pours millions and millions of dollars into transit subsidies for cities, and plenty of money also goes into GO service for commuters who want to go into Toronto, but nothing for rural mobility. It's not fair that the government shouldn't be paying something to provide service for the less fortunate living in the more remote areas. I really can't see the fairness in the system in having rural mobility strictly the responsibility of the charter and tour customers.

That's about all I have to say. I'd be willing to answer any questions.

Mr Colle: Thank you, Mr Hundt, for your presentation. I guess the one point that I wanted to start with is that the bus tour operators were not consulted prior to Bill 39. Is there a group or are there individuals or how does that work?

Mr Hundt: Unfortunately, the bus tour side of our industry is not officially represented by any group. There are 80-some-odd members that belong to the Ontario Motor Coach Association, but they really don't have an official voice within the OMCA about policy decisions, about regulations.

Mr Colle: The other concern you raised was one that I've raised myself, in terms of it looks like they're going to have a one-person board. That's going to be a quorum. What if the person before the board disagrees with that board member's decision? They've cut away the appeal

to cabinet. They're cutting away appeal to the Divisional Court. I can't find out where the recourse would be.

Mr Hundt: I agree, Mr Colle. That's an area that is of grave concern to me.

Mr Colle: What, I wonder, could be a suggestion that we could make an amendment to it that might give an individual recourse to appeal a decision of that one-person decision? Would Divisional Court still be too expensive a process for an appeal for a small company, for instance?

Mr Hundt: It could be a very lengthy process with time constraints and deregulation hopefully coming. The courts may not be our best avenue. But certainly before, the appeal to cabinet at least gave you a sober second opinion.

Mr Colle: In terms of the process here in place, I know your industry or I guess the tour operators basically think deregulation would help you achieve, I guess, a greater opportunity to present your product and to compete etc. Are there any suggestions you might make in the interim that could improve Bill 39 in terms of ensuring that we end up with a mechanism in place by January 1, 1998, that could ensure there's an orderly constructive transition to deregulation? I know you mentioned that there didn't seem to be any mechanisms in 39. What suggestions could you make that you think might enable this to be proceeding towards that goal of deregulation but at the same time putting in mechanisms to make it viable?

Mr Hundt: I think there should be a reasonable transition period here, and this new legislation doesn't provide for that. I would like to see them relax the entry requirements so that there could be more competition. I know that a policy directive from the minister in the past has been for more competition, and I'm not so sure that the board has given us that more competition that we need in this transition period. Maybe some more name-user applications could be grants so that tour operators, if they don't want to use a bus company that could be competing with them, could use another carrier. They wouldn't have to be compelled to use a competitor.

Mr Colle: Because right now you're forced to use those carriers because, in most cases, tour operators don't have their own buses.

Mr Hundt: That's right.

Mr Colle: And so that would be a suggestion of enabling more options for the tour operators.

Mr Hundt: That's right.

1840

Mr Pouliot: Mr Hundt, as an applicant, suppose you no longer have to satisfy public necessity and convenience as criteria; all you have to do on the regulation side is answer the safety criterion, the safety concern, and provide proof of published insurance requirement — that would make an applicant more likely to have success, would it not?

Mr Hundt: Yes.

Mr Pouliot: Share with me, please. At present, if you make an application and you're turned down by the board, what appeal mechanism do you have, in your opinion?

Mr Hundt: Presently, all you can do is appeal to cabinet and hope that they will reverse the decision of the board.

Mr Pouliot: Oh, so you would appeal to cabinet. What do you think your chances would be? I don't know; I'm asking, sir. If you're turned down by the board, you've applied for a licence and then you appeal to cabinet, there's been nothing catastrophic, there have been no new circumstances or evidence to change the value of your application. It's been turned down by the board. The same goes to cabinet for review and possible approval. What do you think your chances are? Be careful. Then I will tell you how many have been approved.

Mr Hundt: I think that there have been a couple of interesting test situations where historically in the past it's been difficult for tour operators to get licences. There have been two where they've gone to cabinet and cabinet has reversed the decision of the OHTB that I'm aware of.

Mr Pouliot: You know why ministers are afraid? I know why one minister was petrified by these things and when you are in doubt and when you're petrified, you say no. Because the board is quasi-judicial. You try not to even have a cup of coffee with them because of the relationship, and that's always the *bête noire*, the glass jaw of any relationship. It's quasi-judicial. Why don't they make it judicial or not judicial? You operate at arm's length, so you set the guideline, you give them the tools but you can't get them back in, so unless it is extraordinary in its application, you're always frightened that somebody will point the finger and say, "This is too political."

What I'm saying is, maybe if we had a mechanism where you would have a frivolous argument thrown out, that you don't reapply for the sake of reapplying, or if new evidence comes to form, that you would have a body after a reasonable time period that would not review but would consider that application deemed to be a new application even if it is by the same person.

Mr Hundt: Yes.

Mr Pouliot: I share in your concern. I wouldn't count too much, and I say this with respect. I think regardless of administration, people are quite reluctant when it comes to appeal to cabinet, because things haven't changed a heck of a lot. It's just one more crack at it and it has very little chance of success because it kills the ministry in terms of morale and it certainly undermines the authority of the board.

Mr Carroll: Following up on that line of thinking, because I'm a little bit confused as to exactly what the issue was there, but the new board that we're proposing will not have a political component to it. Do you not see that as an improvement over the current situation as described by Mr Pouliot?

Mr Hundt: The Ontario Highway Transport Board to my knowledge has never had a political component, but there was always this option, if you were turned down by the board, to appeal to cabinet. So they were always supposed to be completely neutral, OHTB.

Mr Carroll: You'd like to see us allow more competition through that transition period. In other words, you'd like to see deregulation tomorrow. That would be your preferred position?

Mr Hundt: Yes, by all means.

Mr Carroll: Okay. But in the absence of that, you would like to see Bill 39 allow more deregulation, instead of just, "On January 1, 1998, we're deregulated." Would you believe in deregulation?

Mr Hundt: Yes.

Mr Carroll: Explain to me a little bit. We had a gentleman in here before who was in the same business you're in, the bus tour operator business. He didn't own any coaches. You own some coaches that you operate under somebody else's licence, I understand.

Mr Hundt: That's correct.

Mr Carroll: He talked about a situation, the problem being that for him to buy the service of the coach he was totally at the mercy of the person who had the licence to operate in the area he wanted to pick the people up from. He talked about a situation, a specific one, where to take people from London to Atlantic City was \$2,600 but to take people from St Catharines to Atlantic City was \$5,400 because he was dealing with two different people. Is that a fairly common occurrence? Maybe not of that magnitude but —

Mr Hundt: That is very common and it makes it very difficult, as tour operators, to offer prices to the public when one bus company's charging him one rate and another one could be charging him rates that could be 30% or 40% higher.

Mr Carroll: And you have to use that company?

Mr Hundt: That's right; you have no choice.

Mr Carroll: Having your own buses and operating under somebody else's licence: How does that change that scenario for you?

Mr Hundt: It gives us more control over the quality of our service. We work with a lot of senior citizens and we've got drivers who do a much better job in serving those people. It gives us a lot more control, and also control over our pricing.

Mr Carroll: If you wanted to go outside of those areas where those licences function, you can't use your own buses?

Mr Hundt: That's right. Sometimes we've got to park a half-million-dollar coach, which doesn't make a lot of sense, and hire a coach from somebody else.

The Chair: Thank you, Mr Hundt, for taking the time to appear before us here today.

HUGH MORRIS

The Chair: Our last presentation this afternoon will be Mr Hugh Morris. Good afternoon.

Mr Hugh Morris: I'm appearing on my own behalf, but I'm also a member of the Canadian Transport Lawyers' Association. At about 5 o'clock their executive authorized me to appear on their behalf as well.

The transport lawyers' association is a group in Canada of about 125 lawyers, 100 of whom are Canadians and the remainder are Americans, and there's an allied organization in the United States. Our association's been active, and I certainly have been active, in appearing before regulatory tribunals across Canada for four decades.

I want to talk about six things, and hopefully I can keep my remarks focused and also brief, bearing in mind the hour of the day.

Firstly, I want to applaud the scheme of Bill 39. I think, as one who has appeared — I was adding up today. I'll bet I have appeared 5,000 days in my career before the Ontario Highway Transport Board and other tribunals across Canada, so I've got some sense of how these regulatory tribunals work. I think what you have achieved is an attempt to telescope a function. Particularly, moving the enforcement side of transportation regulation over to the board is a major step forward.

I also like the idea of telescoping time, if it's at all possible, in order to have speedy hearings and hearings of some finality, although I'll have some comment about that in a moment.

By moving administration of enforcement to the board as well as the board functions to one body, I don't think three days a week, which I understand is the amount of time they're going to be given to operate, is nearly enough. I think in whatever budgeting that takes place or direction takes place, you need to give the flexibility, if the workload is there, to let them work somewhat longer.

I know this industry has relied upon this board in particular for decades, for as long as I've been there, firstly as a body of expert opinion and a board that works very, very efficiently. The industry has found over the years — and certainly I as a practising lawyer and I think my colleagues — you need advice on a timely basis, you need it on a daily basis, you need it to be responsive, and you need decision-making to be done in a speedy manner as well. My experience over the last 10 years, and particularly today's board, it's a very dedicated group of public servants who do an outstanding job and I just question how they can do it in three days.

The second point I want to make is the question of no hearings. I know the purpose of this is to speed up the process, but I tell you, no hearings will not speed up the process.

I think of Dr Bunting who's sitting back here. My hunch is the new procedure, the new process will be not bringing in 100 people to a hearing from all across northern Ontario, or all across anywhere else, and saying: "We're in favour of more competition." It'll be expert testimony: city managers, city industrial officers, experts such as Dr Bunting. Most tribunals with which I am familiar give the tribunal the power to determine that it will be no hearing, or it will be a hearing, or part of it will be in public hearing.

For instance, Dr Bunting could be far more effective giving evidence orally. He files his brief. "Dr Bunting, do you swear the contents to be true?" "Yes, I do." "Would you give the same answers today if you were asked them orally?" "Yes, I would."

No more direct examination; cross-examination instantly. The board gets the flavour of what he's got to say in cross-examination because his brief is already there, the competing brief is there and that kind of expert testimony is far more effective for the decision-maker if it's in a public hearing, because what if the board has some questions? We've got Dr Bunting's brief, we've got

Dr X's brief in competition, but I have some questions. How do I question them? I don't have any way of questioning it or asking more questions or informing myself.

1850

If the essence of this legislation is to speed up the process, in my view it can be far more quickly handled than to have to prepare a long document in reply, no questions, and maybe another reply document from the applicant, no questions. It all takes a lot of time and is far more efficient if handled in a public hearing. It lets the board decide, based on the written material it has. "That's not necessary for a public hearing. I don't need to hear 100 citizens from Timbuctoo saying they want more competition. I'll accept that evidence, but I do want to see what the expert has got to say under cross-examination."

Page 3, paragraph 2 of my brief. The board can't rehear or review or amend its decisions, basically doing away with sections 16 to 20. I heard some comments on the appeal provisions and I really wasn't intending to spend any time on it, but if I could briefly comment, petitions to cabinet have not worked, traditionally. That's too time-consuming, too much written material and it's really difficult for a cabinet to understand why the board made the decision it did.

There is a provision in the existing act which works very well and has some salutary benefit to the unhappy applicant or the unhappy respondent; that is, you can bring a motion asking for a hearing by way of argument only, and maybe the legislation or rules of the board would be "written argument only, a written motion only," everything filed by fax, shortening the time limit. The purpose of all this is to speed up the process. We don't want hearings going on for months and months, in writing or otherwise.

If you're unhappy, you file a motion maybe on five days' notice by fax. The board considers it and gives an answer. The respondent to that motion replies in another five days, the board reads it and says, "No, you're not entitled to another hearing," or "You're entitled to a hearing on this one specific issue," just one narrow issue. At least it gives you a little bit of a safety valve to let possible errors be corrected, and I'm not talking about typing errors, because the Statutory Powers Procedure Act provides for them.

I think you need to look at the entire section in the Statutory Powers Procedure Act that lets a board make its own rules as to how it's going to handle this situation. If you're going to make the system work and have some credibility, I would have some safety valve, but shorten the time; make it very short, maybe no hearing on the rehearing, if you will, but some method by which you can say, "Hey, you missed the whole point on this area," or "You've disintitled me to something that everybody agreed to and you've given me something that nobody agreed to."

There's got to be some safety valve because you can get decisions that might be 10 pages long; it's easy to make a mistake when you don't have a chance to consult in one way or the other. A rehearing on a very simplified basis I know would work.

The transition provision is unfair to the public. If the purpose is to speed up the process, I want to back up. In February, the Ministry of Transportation advised the transport board: "No more hearings. You can't do anything with anything." I objected. That's unlawful, in my opinion. I threatened to take the board to court if they wouldn't hold hearings. I've now got my hearings back.

This was all in anticipation of legislation that would have been enacted a couple of months ago. I understand, and I applaud what the ministry had done in trying to harmonize and speed up this process. I think they've done an outstanding job, but in that area we've got commercial transactions sitting out there and the public buying and selling, and I can't have a hearing. Now we can have hearings.

Let's say this legislation is enacted on June 15. I have an application I filed last week. Normally it would be published for a hearing in the March 25 or March 30 Ontario Gazette, whenever that Saturday was — 29 days to oppose, so I've gone past June 15 and I have to start all over again; I have to refile. I'd have to put in a business plan now. I don't have to put in a business plan the way the current system is. I do that at the hearing.

My hunch is that by not allowing the legislation to permit applications filed and hearings commenced to go forward under the transition provisions, I could lose two, two and a half months in time in an industry that depends historically on fast reaction time from the board, a very efficient board and a very quick response time in terms of your ability to get a hearing and get a decision.

I don't see how anyone is prejudiced if you allow me to file today, get my hearing and proceed under the old legislation rather than having to start all over again in a costly, time-consuming, time-wasting process.

It's a big industry. A lot of mom-and-pop companies operate in this industry, but I believe it's unfair to force me to start all over again, especially in these economic times.

The final point I want to make, and you've all touched on it, is this whole question of harmonization. As I said earlier, I've spent more time before this board than I think they care to admit, but I can tell you that in eastern Ontario a lot of small operators will be dead meat very quickly if the competitive environment suddenly has them facing not just the big Montreal operators, of whom there are many, but many other small mother-and-father operators in western Quebec who will move into that market just like that. It's unfair.

I know for a fact that the Ontario segment of this industry — not just the Ottawa Valley — northeastern Ontario, coming over from Rouyn-Noranda, would be devastated within six months, I assure you, with this additional competition if they didn't have an opportunity to operate on the same level playing field. It just will hurt them very badly. I'd have the applications filed tomorrow. If you do deregulate, in a year and a half it will hurt those family businesses very badly.

The same would hold true for northwestern Ontario. Manitoba operators will be here just like this. I've tracked this both in the United States and Canada for many years. Certainly, from what I read of what Quebec wants and what Manitoba wants, they believe in a system

which in essence protects rural communities with service by virtue of their regulatory scheme, and I don't see them changing their minds in the near future.

In conclusion, I applaud what's been attempted here. I think it's a first-class piece of work. For the next while it will work well, especially the ability to handle much of this work on a no-hearing basis. Even if you accept my thesis that where you've got a specialist or an expert such as Dr Bunting, it's far more effective and far better for the tribunal, in making its decision, to have that person heard orally, but you don't need troops of witnesses coming in to make their submissions.

My very last point is, if it is intended to deregulate on December 31, 1997, if we have legislation on June 15, in essence we have about 18 months. I have to say that's a very short period of time for anyone to be on a learning curve. I would hope that whomever the government appoints, they pick some people who have the administrative experience, the historical experience of how this board has worked, because if they don't, they'll fail.

1900

I don't agree with all the decisions the existing board makes. I've never agreed with all the decisions, because sometimes I lost, but if you talk about integrity, competence and experience, it takes a long time to learn it, and the people you've got there are first-class administrators in a really tough job. If they are to be replaced, fine, that's government choice, but I certainly hope the government will pick people of similar experience and dedication, because these are really good people. Thank you very much.

Mr Pouliot: When one listens to Mr Morris, integrity, competence and experience come to the forefront. With respect, sir, I say this not so much by way of a compliment as by way of observation and reputation. Any government would be well advised to listen to your counsel. Not to do so, in my opinion, would be at the peril of the public good. You offer equilibrium and true balance. Your experience has long been acquiesced and attested to by people on all sides of the issue.

Unfortunately, what makes us all worried is not if they will deregulate and under what conditions; we have to assume from sitting where we are, Mr Morris, that it will be done under existing conditions — if we could have the certainty that time would permit us to witness other practices than predatory, because not vultures but certainly some entrepreneurs are poised for the day when it's legal to file and they will be soliciting your good advice and your good service. They won't come by the thousands, but those who come will be well equipped and there will be many. I don't think anyone wishes to have anyone hurt, and I certainly appreciate very much your understanding of process.

What better light and expert to guide a client? If I were a proponent, if I were in that sector, I would hire yourself and I would hire the good doctor as well. Hopefully, with expediency I would be able to afford both of you. I really have no question, just comments. Thank you.

Mr Morris: I accept.

Mr Tascona: Thank you, Mr Morris, for your presentation. I just want to refer you to page 3 of your brief

dealing with the section 16 review. What types of errors are you referring to? You alluded to possible other circumstances as well where the review powers would be beneficial.

Mr Morris: The kind of situation where they may describe a route and misname the route, misname the towns, misname the counties or the townships or the regional municipalities, misname the types of equipment, make errors with respect to various conditions the parties had agreed to in a licence. Licensing is a very complicated process. Some of that can be corrected under the Statutory Powers Procedure Act, but that act also says boards can make powers to rehear unless specifically prohibited by a statute. I just question that.

My hunch is that there weren't two motions in the whole year to rehear a case before the board; maybe three, but that doesn't take a lot of time. There was one recently, which I was only watching peripherally, where the person was not a lawyer. They filed a motion and the board heard the motion and said, "Yes, we're going to hear argument on this one narrow point." It was just one narrow point, and the person was successful.

With fax today it needn't take two or four weeks or notice in the press or anything else. You just give notice to the parties, and it's a very salutary way of helping to correct those errors, but also to try to air a subject where you're an aggrieved party on one side or the other.

The key is speed, and I think this legislation has to be handled very quickly because the industry is just sitting in limbo. But I also think that once it's in force, the ability of the board to move quickly, expeditiously and give very quick service to the public will have a lot to do with its ultimate success over the next 18 months or two or three years.

Mr Tascona: Isn't that why it's important that you don't have applications filed prior? Your point in terms of applications filed, that's going to slow down the board if you have a flood of applications filed for the transition.

Mr Morris: Why would it slow them down? Why can't they sit and have the hearing right now?

Mr Tascona: If you want to move fast, if you're going to have those types of procedures in place which still will be subject to section 16 review, you wouldn't have the speed you would need.

Mr Morris: I don't understand you, sir.

Mr Tascona: I think my point is basically that if its hearings commence, the rules don't change, but you could have had a flood of applications coming in before, and that will slow down the board.

Mr Morris: Not really, because a lot of them are not opposed. The board has power over its own procedures, and you can elect. I can say: "I don't want to spend a lot of money on a five-day hearing. I'll go the other route." Why take away that option?

Mr Colle: Thank you, Mr Morris. I think you've made some very good suggestions that might improve this bill. The one thing that is very apparent here is that the board is going to have some complicated matters before them and they're going to have to deal with them quickly. Do you feel that the one way of allowing for a safeguard on decisions made for the board and recourse for applicants is to allow people possibly to file a motion that would

enable them to have an opportunity to address an error or some kind of contradiction in the ruling?

Mr Morris: That's correct, but again on a very tight, time-limited basis, and the motion might be handled in writing. All I say is, you need a safety valve of some kind. It'll work better if there is that safety valve, provided it doesn't delay the process.

Mr Colle: If the safety valve isn't in place, how will it cause confusion and problems in the industry?

Mr Morris: I don't see it. The safety valve is there now, excluding petitions to cabinet and going to the court, which I agree don't work. I can bring a motion and say I want to rehear this case, and the board has pretty tight rules on whether I can succeed even on that motion.

Mr Colle: Those are pretty rare.

Mr Morris: Very rare.

Mr Colle: At least in this case, if it's kept there you know there is that recourse.

Mr Morris: That's right. It's a great safety valve.

Mr Colle: For that odd time it happens.

Mr Morris: Seldom used.

The Chair: Thank you, Mr Morris. I'm glad we were able to accommodate you at the last minute at the hearings today.

That being the last submission for us today, this committee stands adjourned until 3:30 in this room on Wednesday, May 15.

The committee adjourned at 1908.

CONTENTS

Monday 13 May 1996

Ontario Highway Transport Board and Public Vehicles Amendment Act, 1996, Bill 39, <i>Mr Palladini</i> / Loi de 1996 modifiant la Loi sur la Commission des transports routiers de l'Ontario et la Loi sur les véhicules de transport en commun, projet de loi 39, <i>M Palladini</i>	R-779
Ministry of Transportation	R-779
Jerry Ouellette, parliamentary assistant to the Minister of Transportation	
Trentway-Wagar Inc	R-782
Jim Devlin, president	
Silver Fox Tours	R-786
Avo Kingu, general manager	
Amalgamated Transit Union, Canadian Council	R-788
Tom Parkin	
P.M. Bunting and Associates	R-791
Dr Mark Bunting, consultant	
Ontario Motor Coach Association	R-794
Brian Crow, president	
Canadian Federation of Students — Ontario	R-797
Heather Bishop, chairperson	
Can-ar Coach Service	R-800
Ray Burley, vice-president	
Travel Ventures Canada Inc	R-803
Larry Hundt, president	
Hugh Morris	R-806

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R-19

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Wednesday 15 May 1996

Journal des débats (Hansard)

Mercredi 15 mai 1996



Standing committee on resources development

Comité permanent du développement des ressources

**Ontario Highway Transport Board and
Public Vehicles Amendment Act, 1996**

**Loi de 1996 modifiant la Loi
sur la Commission des transports
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 15 May 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 15 mai 1996

*The committee met at 1536 in committee room 1.*ONTARIO HIGHWAY TRANSPORT BOARD
AND PUBLIC VEHICLES AMENDMENT ACT, 1996
LOI DE 1996 MODIFIANT LA LOI
SUR LA COMMISSION
DES TRANSPORTS ROUTIERS DE L'ONTARIO
ET LA LOI SUR LES VÉHICULES
DE TRANSPORT EN COMMUN

Consideration of Bill 39, An Act to amend the Ontario Highway Transport Board Act and the Public Vehicles Act and to make consequential changes to certain other Acts / Projet de loi 39, Loi modifiant la Loi sur la Commission des transports routiers de l'Ontario et la Loi sur les véhicules de transport en commun et apportant des modifications corrélatives à certaines autres lois.

WALSH TRANSPORTATION LTD

The Vice-Chair (Mrs Barbara Fisher): Good afternoon. I'd like to welcome everybody to the second day of hearings on Bill 39. We will be able to provide 20 minutes to each of the participants who come forward this afternoon. Sir, I assume you're Mr Rick Walsh, president and owner of Walsh Transportation Ltd. Welcome to our hearing process.

Mr Rick Walsh: I'd like to thank this committee very much for the opportunity to be able to speak in front of you. I'll try to be brief and summarize for your information, with the hope that some of the comments I make will bring some response and questions from your various members.

My name is Rick Walsh. I'm president of Walsh Transportation. Walsh Transportation is located in Haileybury. It's been in business since 1935. We are licensed with various licences from Kirkland Lake and the Tri-towns — North Bay, Huntsville and Bracebridge. Our head offices are in Haileybury, serving the Tri-towns.

We run a variety of different bus transportation modes, such as the public transit system for the Tri-towns. We have line runs. We have a fleet of school buses. We have charters and tours. We have airport service, van rentals, limousine service. We have maintenance facilities for ourselves as well as serving various other operators in the province.

We employ about 85 people, with about 70 pieces of bus equipment.

I have done some consulting work for various other industries in the area. I've been a board member of the Timiskaming health unit and the Tri-town Association for Community Living. I'm a 20-some-year member of

Rotary and past president twice over; and also in Knights of Columbus. I'm married with four lovely daughters.

The present regulatory bus system has worked relatively well over the years. The writer believes that the system could have adapted to the changing environment by allowing more entry to create more competition, but at the same time serving the public with safe, reliable equipment at a competitive price. It is believed by myself that the government's commitment to make things easier and more free for business while serving the public well could have been achieved under a regulatory regime.

Having said this, and before addressing the interim legislation, I would like to make the following comments.

The Quebec and US carriers: First of all, it's very hard for Ontario to open up the floodgates in terms of deregulation without other jurisdictions being deregulated at the same time. If that happens, these people will come into our jurisdiction, take our business away from us, cost Ontario jobs and create a lot fewer taxes and benefits to Ontario.

Our position is that we do work for major carriers in the Toronto market during our summer months, when in the winter months our ski buses and hockey teams and various other teams are on the go. I'm not sure how viable we would be if we didn't have access to the Toronto market through other major carriers during the summertime. If we are to deregulate at this time without, say, Quebec and Manitoba deregulating, then these people would come into our jurisdiction and take our trips, certainly making a lot of bus companies in Ontario less viable.

Walsh Transportation has been competing against the Ontario Northland Transportation Commission for many years. It is ironic that its taxes are going to subsidize a government-run competitor of ours. Walsh Transportation is willing and able to take over the Ontario Northland Transportation Commission's line runs in northern Ontario without any loss of service. In fact, we believe the service would be much better, and I'll give you an example of this in a couple of minutes. Because Ontario Northland does service the area from Toronto to North Bay and to Sudbury, we also have a southern operator that would joint-venture such an endeavour. We believe that there are other people in the industry who would also take over the Ontario Northland Transportation routes as well as ourselves, and that you people, or us as taxpayers, would not have to subsidize the service.

The fact that rural Ontario would lose service, as suggested by some of the big line carriers, in my opinion is false. An example of this: Even though the Ontario Northland Transportation Commission is subsidized throughout northeastern Ontario with my dollars, I run a

limousine service daily from Kirkland Lake and the Tri-towns to Toronto, Sudbury and North Bay. The ridership is good; it's increasing. We also run a division in North Bay called Northern Airport Service, where we run two daily trips from North Bay, Powassan, South River, Huntsville and Bracebridge to Pearson International Airport.

We believe that our level of service is most probably superior to the ONR. It doesn't cost us a dollar as taxpayers. We think that there's no place but to grow in this area and that the public has been relatively poorly served. We believe the Ontario Northland Transportation Commission has not been very well managed over the years.

The second thing in terms of seeing rural Ontario being served is that I must mention that when you're going from North Bay, say, to Toronto, all the little towns in between North Bay and Toronto will get serviced. It would be crazy not to service these small towns when you're going right by their door. With the example of a place that is out of the way and not on a major corridor between two points, such as the town of Kirkland Lake, we're already serving that city. If you've decided, in all wisdom, that deregulation is happening, even if you're in a place like Peterborough and want to get into Toronto, we firmly believe there are people in private enterprise who will take up all these line runs, and rural Ontario will not only be served, but it'll be served better than it is now because of the monopolistic situation.

There's one thing — and my apology — that I forgot to mention in the brief, and that is, as I mentioned earlier, we are a public transit operator. We've run under contract with the municipalities of Dymond township, New Liskeard, Haileybury and Cobalt for 21 years now. Consistently, our rates run about half those of your public sector municipalities that are running their own systems. We believe private enterprise could save the taxpayers of Ontario hundreds of millions of dollars by privatizing yet keeping control of the system.

I run the system for the municipalities. The politicians tell me how to run it, and they have checks and balances to make sure I run it properly and according to their will, so that the public need is being taken care of. My apologies for not mentioning transit contracting, but I think there are a lot of places in Ontario right now, such as Barrie, New Liskeard, Haileybury, Cobalt, Chatham and various localities, that are now privatized out, and it's being done at consistently much lower rates.

A point to remember is that my employees are not paid consistently much less than the unionized employees are paid in some of these systems. That's a point you should remember: It's not that we're cutting our labour rates to do this. Our employees do make within 20% or 10% of what public sector unionized — we're not unionized, by the way.

Bill 39: I believe some sort of mechanism has to be in place during a transition period. My largest concern in terms of the free trade deal back in the late 1980s was the fact that business was not given sufficient time and knowledge to adjust to the free trade deal. I believe one of the main reasons we lost hundreds of thousands of Ontario jobs was that business wasn't ready. You people,

as governments, did not really — maybe we needed a two by six to our heads to knock into us what was coming, but we lost a lot of jobs in Ontario because of the free trade deal, because we weren't ready for it. I believe a lot of jobs went to the States.

I believe that a transition period that genuinely moves towards deregulation at the least cost is a good idea. We have to have open markets, not shelter existing monopolies. I am for the act in that it makes the best of a bad situation and gives time needed so that other jurisdictions in Canada may open their gates and deregulate at the same time as Ontario. We need this time period. If we don't have the time period, it's going to cost Ontario jobs, because Quebecers are going to come in and steal a lot of our work, as well as people from the States.

Also, hopefully with what the government is doing in terms of taking the handcuffs of private enterprise so that we can do our job better, there's also responsibility. I'm non-partisan, but I believe the government is running in the right direction in terms of lowering its costs, because when we open the floodgates and we have Americans coming in who are paying \$1 a gallon for fuel, and their regulations and various other costs are lower, then we're going to have to be damned smart to compete against these people. We have to have lower costs, and I think it's going to take Ontario several years to get our costs down so that we can compete against other jurisdictions.

I believe that this legislation, when it's implemented, should move very strongly towards deregulation, that we shouldn't leave everything as it is for the next 18 months. That's not going to do us, as business people, any favour. We need you people to gradually open the door so that we can compete against the Greyhounds or whoever else, so that we can be ready when the gates are opened. If we're not, I believe the same damned thing is going to happen to the bus industry as happened to a lot of manufacturing jobs in Ontario.

I believe Bill 39 is far from perfect and I believe the industry's long-term viability has been compromised by certain parties in that I don't really think this is a genuine transition period. It should be a transition period so we can be ready. The other thing is also that we have to compete against other jurisdictions, so they have to deregulate at the same time we do; otherwise, we're just going to get beat up badly.

So, reservedly, for the above reasons, I support Bill 39. I wish to thank you very much for allowing me to present this brief, and I would like you people to ask me some questions.

1550

The Vice-Chair: Thank you very much, Mr Walsh. We have approximately two minutes per party to share in question period, and we'll start with the government side.

Mr Jack Carroll (Chatham-Kent): Mr Walsh, thanks very much for an excellent presentation. Are you familiar with the organization Freedom to Move?

Mr Walsh: Yes, I am.

Mr Carroll: They are doing a fair bit of fearmongering about all of the communities that will lose service should Bill 39 happen and should we go to deregulation. Three places they mention on here of the 170 that will lose service are Bracebridge, Huntsville and Kirkland

Lake, three areas that you currently serve. Would you care to comment on the validity of their claim that those three communities would lose service if we proceed down the road we're going?

Mr Walsh: I think that not only won't they lose service, but they'll have more service. It's what form that will take. For example, in the first week of July or June we're going to be starting service — where we were running limousine services from Kirkland Lake to Toronto, we're upgrading our licence. We've got an application before the Ontario Highway Transport Board to put on airport-type buses with reclining seats, air-conditioning, air ride: a very, very nice, smaller piece of equipment that costs less to run than the big coaches. So if anything, service to the communities you've mentioned, as far as we're concerned, will only get better.

Mr Carroll: I was also interested in your comment that your company feels very comfortable that it could take over the routes serviced by ONTC and provide better service and not use any taxpayers' dollars to subsidize that. Has that been a position you've held for some time or is it new, and will Bill 39 affect that position?

Mr Walsh: We've felt that for a long time. I was competing in various markets in northeastern Ontario against a government-run outfit that would cut their charter rates just to get the trips. If anybody's looked at their statements for the last few years, they've lost a pile of our money, where I've made money. I think if and when the deregulation happened, we've already got line runs between Kirkland Lake and those various points that I mentioned, and we will increase these, and I would venture to say that unless the government subsidizes or would continue to subsidize the Ontario Northland, they're going to get knocked either by us or by somebody else because we're going to beat them on service.

Mr Mike Colle (Oakwood): It's an interesting comment you have at the end here. You're saying, "It bothers me though that this legislation has been influenced only to give the Greyhounds of the industry time to get their houses in order at the expense of not having a gradual, more open phase to deregulation." Could you explain how this legislation is catering to Greyhound and other big carriers?

Mr Walsh: I believe — and by the way, I'm a director of the Ontario Motor Coach Association also and I didn't indicate that because I'm appearing as a private company — we had some comments back to the MTO and to the Minister of Transportation on ways to move towards deregulation and open the gates more. I believe the gates aren't going to be opened enough, and they're not going to be opened enough because there was influence on certain parties. I think that's a very serious mistake in the long term for the bus industry in Ontario.

Mr Colle: So basically the government caved in to pressure from some of these big carriers and didn't proceed as they had intended to.

Mr Walsh: I think they didn't take the advice of the rest of the industry and proceed as they should have proceeded.

Mr Colle: And that advice is?

Mr Walsh: There are 80 other bus companies in Ontario that we, as a board of directors in the Ontario

Motor Coach Association, had canvassed, and that had voted on various ways to make the system more streamlined, yet I feel honestly that we're not going to move in the next 18 months and it's going to hurt us.

Mr Colle: So how could you support this bill, since the government basically, through this bill, caved in to people you disagree with in terms of their perspective on where the bus industry is going?

Mr Walsh: We have to support the bill because we didn't have any choice. If we don't support the bill, I believe that de facto deregulation would occur immediately and that Quebec and US operators would have come in and cost Ontario many thousands of jobs. That's why we had to support it.

Ms Shelley Martel (Sudbury East): I want to focus on your comments around your concern with deregulation in the context of Quebec and Manitoba not deregulating. Maybe I can just read you their positions, and they are positions as of November 1995, so they're pretty recent.

Manitoba says there is simply no major problem that would be addressed by bus deregulation and no significant constituency advocating it other than on theoretical or ideological grounds. They have written to the federal Minister of Transport and said they do not support bus deregulation.

Quebec said: "As things stand, total deregulation threatens to accelerate the process whereby regional bus transport services gradually disappear. Moreover, the resulting greater competition on more profitable routes would force carriers to drop less heavily travelled time periods and concentrate on the hours and periods most in demand." Their position as well was that they were opposed to the federal proposition of bus deregulation.

The questions I wanted to raise with you are around that. We haven't heard anything to the contrary to indicate a change in their positions, so I assume in a year and a half from now we're going to be moving into full deregulation in this province, with our neighbours not deregulating. What kind of impact will that have on your service that operates out of Toronto in terms of service lost and jobs lost?

Mr Walsh: First of all, to answer the first part of your question, Shelley, I believe the industry basically is not in favour of deregulation but we were told by the government that we were being deregulated. As I stated in my first few sentences, I believe the system could have been streamlined and made more competitive so that the public was better served. Making that point clear, the industry does not favour deregulation but we were told that's what's going to happen.

Secondly, this is what this interim bill does: It allows us to wait until Quebec and Manitoba are forced because of the free trade deal to deregulate, so that we're all deregulating at the same time. Whether the date is right, 1998, or whether it's going to be 1999 or 2000, it is our hope that when it comes, and if those other jurisdictions are not ready to deregulate, Ontario will put a postponement in place so that we're not deregulated before the other parties, or what you said will happen and there will be a loss of jobs.

Ms Martel: Maybe I can just tell you what the minister said on April 4 when he announced this in the

House. It was that, "Today I am announcing interim measures aimed at easing the transition to full deregulation of the intercity bus industry in Ontario on January 1, 1998." I can tell you, there's nothing in the statement he made or statements that he's made since in the House to indicate that over the next year and a half we're going to study this issue, and if Quebec and Manitoba don't move or we see something else happening, we're not going to implement that on January 1. There's been no indication about that at all. So my sense would be that we're moving and it's coming upon us and you and a whole bunch of other carriers are going to find yourselves in a position where you're having to compete directly with regulated markets both to the east and west of us, and a serious problem coming from the US as well.

The Vice-Chair: Thank you very much, Mr Walsh, for attending today. We've enjoyed your presentation.

MAJOR INTERCITY CARRIERS OF ONTARIO

The Vice-Chair: I would ask that Don Haire, president of Proteus Transportation Enterprises, come forward.

Mr Don Haire: I'd like to thank the Chair and members of the committee for the opportunity to speak. I intend to read a very brief statement which summarizes the position of the group I represent, and from that point forward I'm available for questions.

My name is Don Haire. I am the coordinator of MICO, which is an acronym which stands for Major Intercity Carriers of Ontario. MICO was set up in October 1995 for the specific purpose of responding to the government's request for comments and suggestions on how to introduce economic bus deregulation in Ontario.

The members of MICO are Grey Goose Bus Lines, Greyhound Bus Lines of Canada, Ontario Northland Transportation and Voyageur Colonial. These four bus carriers represent some 80% of the scheduled intercity passenger traffic in the province, some 95% of Ontario's bus parcel services, and an important component of Ontario's charter bus services, albeit less than 50%. For calendar year 1994, MICO members operated a total of 21.9 million service miles, as per their 1994 Ontario fuel tax returns. To summarize, the MICO members represent the substantial majority of scheduled bus services in the province and are also a significant component of the province's charter bus industry.

1600

If I may, I just want to give you some background of how MICO came into being. In August and September of 1995, through a series of announcements, the Ontario bus industry was informed that the government was essentially committed to doing three things:

(1) Introducing full economic bus deregulation within three years, thereby permitting open-market entry and exit.

(2) Sharply reducing government spending on economic regulation and economic enforcement, starting almost immediately on April 1, 1996.

(3) Maintaining and enhancing, where appropriate, bus safety regulation and enforcement.

At that point, the government invited the various bus industry members to make suggestions on how the government could best achieve these goals. The bus

industry itself at that time can be depicted as having split in effect, into three camps. There was a camp of bus carriers who essentially refused to partake in the process. As to whether there was absolute disagreement with the government or it was nothing more than not wanting to be bothered, it's difficult to say, but there were a number of people who just didn't get involved. There was a group of carriers who wanted rapid deregulation within Ontario among Ontario-based carriers, but they also wanted protection for an extended period of time from carriers from outside Ontario. Then there were those carriers who wanted a runup period prior to full economic deregulation in order to prepare, in effect, for the new regime. The MICO bus carriers are firmly in this last camp; that is, they want a runup period prior to full deregulation.

A key point: The MICO carriers favour bus regulatory reform rather than complete economic deregulation, but they recognize that the government is committed to this latter policy direction. Consequently, the MICO carriers structured a proposed approach on how best to achieve the government's objective in this regard.

MICO's suggestions, as well as the suggestions from other bus industry members, were received with prompt attention by the government. A composite of this industry input resulted in what you have before you today, Bill 39.

Bill 39 incorporates suggestions from all industry groups, of those that participated. It is the view of MICO that the government has done an excellent job both in soliciting industry input and in incorporating the subsequent feedback. This collegial and cooperative approach has earned the government considerable respect within bus industry circles. In effect, they stipulated their policy goal and then they sought advice on how best to achieve it. While we are not in full agreement with their policy goal, we applaud their efforts at this consultative process. We also recognize that it's the government's role, and indeed you can argue it's the government's duty, to establish such policy goals whether we agree or not.

In establishing a 21-month runup period prior to full bus deregulation, Bill 39 achieves three central objectives:

(1) It gives the government the necessary time to decide on and make whatever changes they feel they need in order to ensure the bus industry's excellent safety record is continued after deregulation.

(2) It allows existing bus carriers to make the necessary changes to their cost base so as to have every reasonable opportunity for economic survival in a deregulated environment, thereby protecting existing industry jobs.

(3) It allows a reasonable planning period for adjustments of operating networks so that the loss of bus service to outlying communities is either avoided or minimized.

MICO believes that Bill 39 will prevent a repeat of the chaos that accompanied de facto trucking deregulation in the late 1980s. Bill 39 contemplates a strengthening of economic regulatory enforcement in order to prevent bus carriers from jumping the gun prior to full economic deregulation. Bill 39 contemplates easing the conditions for market entry where existing bus services are sparse or otherwise inadequate. Bill 39 also requires a mandatory

period of notice and consultation prior to any significant bus service reductions.

Given the government's stated commitment to full economic bus deregulation, MICO believes that Bill 39 reflects an intelligent adjustment mechanism for achieving this goal. It minimizes the shocks to public bus service levels that would otherwise obtain if deregulation were to occur in a less structured and more abrupt fashion.

Lastly, and this we find an important point, we observe that Bill 39 is open-ended. While the government has signalled its intent to pursue full economic bus deregulation as of January 1, 1998, it has specifically refrained from incorporating such a sunset date into Bill 39. We note with that the government has given itself the flexibility to adjust the timing of full deregulation should such compelling circumstances as interprovincial bilateral negotiations determine common dates for deregulation that are at variance with the January 1, 1998 date.

The government has articulated its goals and has also articulated its timetable, and those are the signals which industry needs in order to adjust and prepare itself. Based upon experience to date, MICO is confident that the government will be pragmatic in its pursuit of these targets, and we are further confident that the government will continue its consultative approach in the face of any contemplated adjustments to its announced intentions.

With that, I'm certainly prepared to answer any questions you may pose.

The Vice-Chair: Thank you very much. We have about four minutes each for questioning, starting with the official opposition.

Mr Colle: Thank you, Mr Haire, for a good comprehensive overview of the bus industry and how it relates to Bill 39.

I guess one of the interesting, intriguing comments you made is that even though the minister has been very specific about the January 1, 1998 date for deregulation, I too noted that there's no sunset provision in it. In other words, deregulation may come into effect January 1 and it may not. Therefore, the industry as a whole is basically of the opinion that January 1 doesn't have any real binding, let's say, direction?

Mr Haire: No. If I may, Mr Colle, I think you have to take it back one step. One of the things which virtually everybody, to my knowledge, made very clear to the minister was, tell us what you're going to do and tell us when you're going to do it. So in a sense the industry has been asking for direction as to the timetable.

Yes, when I look at the fact that Bill 39 does not have a sunset date, that indicates to me that at the very least they are going to have to come back and pass some form of legislation which will be open to discussion, I presume, at that time. Until they do that, what is now the interim regulatory period continues on indefinitely.

My own reading of the situation is that the government is strongly committed to deregulation, and by not putting a sunset date in in effect they're giving themselves some degree of latitude that if, for example, a deal had been worked with Quebec that there was going to be common deregulation on July 1, 1998, I suspect, although I can't speak for the minister, they would just let Bill 39 continue in existence for another six months. That's my reading of it.

Mr Colle: Another area, just quickly. In essence, you're saying the people you represent believe there are some problems with total deregulation and you think there should be some regulation of the environment and the industry. What are the benefits of keeping a certain degree of regulation, as far as you see it, as far as the industry is concerned?

Mr Haire: The main benefits of maintaining a regulatory environment — although I would add that just about everybody agrees that the current regulatory environment is not good and needs some form of reform — the main benefit, in my view, is the fact that it maintains orderly markets. You don't get fast surprises out there. There is a process that people have to go through to change service levels. In effect, there's a process that people have to go through in order to radically change fare levels to the degree that there is certainly cross-subsidization, although we've just heard a counter-argument from someone else. You can argue that there will be better geographic network coverage with some form of regulated environment.

The position of most of the industry is that regulatory reform would have been preferable to complete deregulation. But let me add that we do not have in any way, and neither do we assert that we have, a monopoly on wisdom. There are pros and cons. The government happens to believe there are more pros associated with deregulation than cons. The bus industry feels somewhat of the reverse. But it is not a black and white situation.

Mr Colle: One of your partners here is Ontario Northland. They're government subsidized, aren't they?

Mr Haire: They are a government crown, and there's an argument as to whether or not the bus operations are subsidized, but I'll leave that for somebody else to decide.

1610

Ms Martel: I want to go to your three points that you raise on page 4 where you say that by having a runup to full bus dereg the bill achieves three objectives and you talk about allowing existing carriers to make necessary changes to their cost base. Can you describe that, tell me what that means?

Further, if you were going to assume that the government was going to live up to everything the minister has already said about moving to full bus deregulation as of January 1, what kind of changes would the four carriers involved in your group have to make to be ready for that as of January 1?

Mr Haire: I'll have to speculate because I'm not a party to their individual plans, but I certainly know a fair amount about the industry.

One of the things I think a lot of people lose sight of is that what they'll have to do is review their entire commitment to fixed infrastructure. They may decide, for example, to get out of terminal garage facilities that they own and go to a variable cost basis so that when the surprises of changes in volumes occur they're not stuck with a fixed cost overhead which is overhanging their cost base.

Again, I can't speak for the individual carriers per se, but certainly you can expect that there will be attempts which will happen in cooperative terms, I would hope,

between the companies and the unions to try and vary their existing collective bargaining agreements. So they can vary themselves to the conditions they face.

One of the things which happens with deregulation is change starts coming at you at a tremendously fast pace. You cannot foresee what's going to happen out there. A new operator can pop up and he can have an introductory price offer of 75% off. You have to respond to that. There are several ways you can respond to it. One, you can match his price or, two, you can get out or, three, you can do some combination thereof, which is what most people will end up doing. They'll partly match his price but they'll also restrict service. For each individual market event the response could be different.

I don't know if I'm helping with this, but there are a lot of things that they have to be worried about. At the fundament of it, what they need to do is to get themselves into a position where their cost base is as variable as possible so they can respond quickly.

Ms Martel: Does that include cutting off service to communities where that service is just not viable?

Mr Haire: I think in some cases it will, quite honestly, but that doesn't mean that that service is going to lose all bus service. You're going to have situations in which the large carriers are going to say, "No, I am not going to service the following towns." Then in some cases people are going to step in and say, "I can do it because I'm a lower-cost operator." In other cases perhaps nobody's going to step in. It's really very difficult to stipulate in any detail what exactly is going to happen because nobody ultimately knows.

Mr Len Wood (Cochrane North): A lot of concern out there with Bill 39 is that for small communities, and I'm from northern Ontario, when you have the large bus companies, with deregulation they're going to end up cutting the rates down to the bare minimum, whatever they can, to drive the small operators out of business and then in turn jack their prices back up. It has happened in the States. I'm just wondering if you think this might happen as well.

Mr Haire: There will possibly be examples of that kind of behaviour which, to me, verges on predation. There was some instance of it in the UK more than in the United States. I don't think it happened that much in the United States, quite frankly. There was a pattern of that to some degree in the United Kingdom. But I think any time you have a situation in which you're in a market regulatory framework which is open, where you have entry and exit on a rapid basis if necessary, you cannot easily force somebody out and then go back in and raise your rates, because the moment you raise your rates you just attract somebody back in.

Granted, there is going to be a time delay but it's not necessarily that large in the bus industry, because this is not an airline where you've got fixed airports and very expensive planes. People can enter and exit from the industry fairly rapidly if they have to.

Mr Len Wood: But if they've either gone bankrupt or sold all their buses, they're not going to get back in.

Mr Haire: Then they're out.

Mr Len Wood: Exactly.

Mr Jerry J. Ouellette (Oshawa): Just a quick question about your industry. First of all, what percentage of

the actual parcel industry does your industry occupy, including the other major players?

Mr Haire: Including the couriers?

Mr Ouellette: Yes. Do you have any idea on those?

Mr Haire: Yes, it's bizarre. It's very small in the east like less than a 1% market share, but if you go out west it's quite significant, 20% or something like that.

Mr Ouellette: I just wanted some information on that. One of the spokesmen for Grey Goose stated that it would not be Grey Goose's intent to reduce services. Is this what we can expect from most of the members of your organization?

Mr Haire: You have to ask me as me, not as MICO, because we honestly haven't discussed that. I've got to believe that some of them are going to reduce services. I'm a former president of Voyager and I certainly know there are a couple of routes that, were I president, I probably wouldn't operate. But I'm not saying that somebody won't step in and operate them.

Mr Ouellette: Some of your other members actually stated that there was a potential to go to mini-buses or minivans to carry passengers. Do you see that as a problem in your industry?

Mr Haire: I have some problems with it, and they relate fundamentally to safety. I can think of some vans I'd rather not see in commercial service and I can think of other vans that would be okay. It depends on the construction of the van itself. This is an area which is being looked at not only by the Ontario government but also by the federal government as to what nature of vehicles should be available for public carriage. The answer is, downsizing makes sense on certain routes, there's no question about it, but there is a point at which it would not be smart. Some of these minivans I think are quite dangerous.

Mr Ouellette: Do you expect the appeal mechanism in Bill 39 to pose any problems to your members?

Mr Haire: I don't think so, no; the life of the interim framework is so short. The whole idea of doing that was to be able to establish discipline in the market so that if somebody was a bad actor, the board could act. I don't think that anybody's rights are being terribly jeopardized because it's only for a short period of time. This is what I mean about avoiding the chaos which happened out of de facto trucking deregulation.

Mr Carroll: I have one quick question. The government obviously has a role to play in safety standards, liability insurance standards. Do you think the government should set a minimum amount of the liability insurances required for bus operators and, if they do, can you hazard what that number should be?

Mr Haire: Right now it's two. They've already indicated they're taking it to five. I think the majority of the bus membership wouldn't mind if it went as far as 10. That, if I may be so bold as to say so, is partly because that's the smart thing to do, but also partly that will prevent fly-by-night operators from jumping in if they have to show a meaningful proof of insurance.

The higher you put the insurance level, the more you then bring the insurance industry into controlling the safety levels of the insurance client, because they have a bigger potential downside risk. I think that basically most

of the bus industry, no matter which side of the Bill 39 question they're on, would not object to a higher insurance standard.

Mr Carroll: But can —

The Vice-Chair: Excuse me, Mr Carroll.

Mr Carroll: — because it's required to keep out the small operators.

Mr Haire: Both.

The Vice-Chair: Thank you very much for appearing before us today.

1620

AMALGAMATED TRANSIT UNION, LOCAL 1415

The Vice-Chair: I would ask that the Amalgamated Transit Union representative Bill Noddle please come forward. Good afternoon.

Mr Bill Noddle: Good afternoon. My name is Bill Noddle, and I'm the president and business agent for the Amalgamated Transit Union, Local 1415. I want to thank the resources development committee for the opportunity to comment on Bill 39, which is An Act to amend the Ontario Highway Transport Act and the Public Vehicles Act.

The Amalgamated Transit Union, Local 1415, represents operators, mechanics, cleaners and other employees of Greyhound Canada's eastern division. We view ourselves as partners in the industry, and are supportive of all efforts to expand the intercity service.

For that reason, we support initiatives that streamline the OHTB. With respect to Bill 39, we believe that with some amendment we could support this piece of legislation. I'd like to take the opportunity to make some recommendations or modifications on it.

One, we'd like a purpose clause. For those of you who have not been in and around the debates of the OHTB over the years, there has been some movement towards the idea of creating a purpose clause in an attempt to assist board members. Many other acts that use interpretive boards include purpose clauses.

We support the concept of a purpose clause and feel that such a clause should explicitly state that the OHTB exists to regulate the commercial use of Ontario's public roadways in the best interests of the people of Ontario, particularly to promote the ability to travel to smaller communities that otherwise would have no public transit system at all.

On the matter of rehearing, we believe that the intention of the government is good, but it has gone too far. Hearings are obviously expensive, and we are supportive of efforts to ensure that the board's time is spent in the most efficient manner possible. However, completely eliminating rehearings is like completely eliminating retrials in criminal cases.

It may surprise some committee members, but in the past parties to a board hearing have submitted erroneous and even fraudulent evidence. Not knowing any better, the board accepts the evidence and makes a decision considering that evidence. Without the ability to rehear, we'll be stuck with decisions that are, to be blunt, based on lies. Obviously, that is a completely unacceptable situation. Sometimes a board makes mistakes in giving

weight, or even consideration, to evidence. Without rehearings there is no opportunity to fix these errors.

Finally, there should be rehearings in some cases where the interest of the board has not been strongly enough represented in the decision. This would allow the board to correct errors to ensure that decisions are consistent with the purpose of the board.

I believe these amendments would make the guidelines for rehearing more specific, while still allowing for the types of rehearings that are essential to ensure predictability and lawfulness from the board.

In regard to oral hearings, under Bill 39 oral hearings would only be reheard when all parties to the hearing agree to oral hearings; otherwise, hearings would be written. The intention of this amendment is to streamline the process.

However, I believe that in many cases a party may attempt to use written hearings as a way to escape strong cross-examination. Cross-examination can be a much faster tool for a board than written hearings, especially if the goal of one party is to attempt to obscure some facts. Also, for members of the general public who are parties to the board, writing a brief may not always be possible. In these cases, I would think other parties might wish to cross-examine such a witness. It is our belief that the hearings should generally be oral, unless there is agreement to the contrary. Generally, hearings are not long. The average hearing lasts about one and a quarter days. With these amendments, however, we believe that hearing can be made even more brief and efficient.

Who is a party in front of the board? The new act states that someone with an economic interest may be a party to a board hearing. But who is someone with an economic interest or, more appropriately, who isn't? Does a mayor of a town that has been hit with abandonment have an economic interest? Does a person whose regular bus has been cancelled have an economic interest? The legislation has to be more clear about the meaning of the phrase. It seems to me that the clear intention of this amendment was to reduce hearing time. My suggestion would be to allow members of the public to be parties to the hearing. After all, the board exists to regulate in the public's interest, but only after making an application stating their intention. As a streamlining effort at the time of appearance, parties to the board should be warned that they could be charged for the full costs they incur at the board if the board believes the intervention was frivolous.

Access to justice: As you know, because the ministry has already cut about \$350,000 in funding to the board, revenues from fines and fees, which were about \$100,000 last year, will have to be tripled. Allocating the full cost of a hearing to the parties, especially when the cost will be going up so fast, may be unfair to smaller companies and individuals. For that reason, we are hoping there can be some changes to allow for equal access to justice.

Sometimes you can go into a board hearing thinking you've got the strongest argument and the rightest cause, only to come out losing. In situations like these, a "degree of success" rule would really hurt, especially if the party was a small company or an individual. We are hoping the legislation can be amended to allow the board to waive or lower fees in specific cases.

Summary: Our position with respect to Bill 39 is fairly straightforward. With changes, we believe we can support the bill. The changes we believe would be helpful are: (1) a purpose clause to give the board a clear sense of the intentions of the crown; (2) the ability to rehear cases so that decisions based on errors or fraud or running contrary to the purpose of the board can be reversed; (3) fairness in court fees to ensure that small operators and members of the public are not denied access to the OHTB; (4) oral hearings to speed hearings and gain more accurate testimony through cross-examination; (5) requirement that a person must apply in advance to be a party to the board; (6) harsher penalties for the parties who want to waste the board's time.

Our position on deregulation, on the idea that in a year or so there should be an attempt to deregulate the intercity bus industry: Let me say that we believe deregulation is not in the interests of anyone; not the companies, the passengers, the BPX clients or the employees. At the same time, we know that Minister Palladini sometimes throws ideas out for consideration to see what the public thinks, like he did with increasing of speed limits.

So let me give you our response to your trial balloon. We believe deregulation is a bad policy for three main reasons.

(1) Quebec-licensed companies won't need a licence to work in Ontario while Ontario-licensed companies will need a licence to work in Quebec, which is highly unlikely ever to be granted.

(2) It will lead to the loss of service in a huge number of smaller communities that receive no other form of public transportation.

(3) It will lead to unregulated monopolies in certain regions or routes that will increase prices and undermine competition.

Ontario is the province that would be most hurt by unilateral deregulation. Unilateral deregulation will place every advantage in the hands of non-Ontario companies and put every Ontario company at a disadvantage. Deregulating in the belief that other provinces will fall into line is playing a high-risk game with the futures of communities, employees and companies. We urge you not to do it.

1630

Policy around intercity busing really is a federal issue. There is a federal process already under way and it makes sense to give that process the time to work. Unilateral deregulation won't force Quebec to deregulate, it will only make them more unlikely to do so. Basically, they'll have their cake and eat it too at that time.

Deregulation and loss of rural service: The idea has been put forward that deregulation can better protect the service in smaller communities. I believe a comparison with what happened in the United States since they deregulated in 1982 clearly shows that a regulated bus industry is better at preserving service into the small communities. According to the Ontario Ministry of Transportation, 1,500 communities were served in 1982, while only 1,100 are served today. That's a drop of about 25% in that time period. However, according to the Interstate Commerce Commission, there were 11,820 American communities served in 1982, which was the

year of deregulation, and in 1991 there are only 5,690. That's a drop of 52% not 25%. And in the United States, some states subsidize remote and rural routes. Without that subsidy, more than 52% of the communities would have lost their service. It seems strange that if we are trying to save money by deregulating we are going to be spending it by subsidizing. It seemed a little contradictory to me.

I believe we can conclude that deregulation would cause an acceleration in the trend of route abandonment.

Regional and route monopolies: In both the US and in Britain, bus deregulation has led to unregulated regional monopolies. In the Canadian airline industry we've experienced much the same situation. Smaller airlines were incorporated into larger ones, even to the point that Canadian Airlines is effectively controlled by American Airlines. In transportation industries regulation is often the only effective way of maintaining some level of competition.

In regard to smaller buses, sometimes I have heard it said that deregulation would be a good thing because regulation requires companies to use expensive 47-passenger coaches and under deregulation they could use passenger vans. Let me clearly state to you that there is absolutely nothing in the existing regulation which places any requirements on coach size on any operator. Under existing regulation, licensed operators could be running passenger vans if they wanted to.

Statements that suggest regulation requires operators to use vehicles of a specified size are completely untrue. Therefore, the argument that deregulation would expand service by replacing buses with more frequent passenger vans is also completely untrue. Right now, if companies thought they could earn more money by replacing coaches with more frequent van service there is no regulation stopping them from doing it. But they haven't, and they won't do it under deregulation either because it doesn't make business sense.

Quite simply, deregulation will cause abandonment of service, especially to small towns and rural areas, and that service will not be replaced by buses or vans. The service will just disappear as it did in the United States.

Deregulation is not a good transportation policy for Ontario. Many town councils — Sault Ste. Marie, Timmins, Barry's Bay, St Thomas, Lakefield and others — have passed motions and resolutions in opposition to deregulation knowing the damage that could be inflicted upon them. There have been petitions, mail-back cards, newspaper stories and letters to the editors. Sitting here in Toronto, you won't have seen those kinds of stories because they're not covered by our daily press. But go to the small towns where the weekly newspaper is read with the attention of the Bible and that's where this is going to hurt.

Members of the committee, this summer listen to the concerns of your constituents. Listen to the person who runs your local bus service. Listen to the shopkeeper where the bus stops or the agent who sells tickets. In the last election, you didn't knock on doors promising to deregulate bus service. Mike Harris never mentioned it and it doesn't appear anywhere in the Common Sense Revolution.

Bill 39 saves you some money by moving the cost of the board on to the industry, so the tax-cutting agenda has been served. After that, there's no compelling reason to upset the apple cart any further. Don't take on a problem that isn't yours, especially a problem that's in your own backyard.

This was not your idea and you don't have to feel you have any commitment to it. It is a trial balloon from the minister and now you are hearing the public's response. I hope that after some time of reflection you will agree that this trial balloon should be allowed to float away. Thank you.

Ms Martel: Thank you very much for your presentation, Mr Noddle. There was one thing that I disagreed with in what you said in terms of making the comparison with the US and deregulation and what the costs would be here. You said, "It seems strange that if we're trying to save money we'll have to spend money to subsidize routes." I can assure you that will not happen with this government. What you will see is a whole bunch of communities losing service because they have no intention of subsidizing any of these routes. That's part of what this is all about, even in terms of cross-subsidization for the private sector.

Let me just go back to your concern about deregulation, because those of us on this side really believe this is what this bill is leading to. The minister's made it clear in every comment that he's made that this is the transition process to full bus deregulation as of January 1, 1998. "It doesn't matter what's happening in other jurisdictions. We hope they'll get on board and deregulate too. If they don't, too bad."

What do you think it's going to mean in terms of job loss for the people you represent if we move to a situation, as I fully expect we will in a year and a half from now, of being fully deregulated here in Ontario and having both our neighbours in Quebec and Manitoba still operating under a regulatory regime?

Mr Noddle: The best thing I can do is quote the facts I know, and that's from the example that occurred in the United States. In 1982, there were 14,000 Greyhound employees; in 1987, there were about 3,200. So less than a quarter.

Mr Bart Maves (Niagara Falls): You said at the start that you're a partner in your industry and I know you're proud of your ability to offer competitive service. If there were unregulated markets in Manitoba and Quebec, could the companies your workers work for compete in those open markets?

Mr Noddle: Could we compete? On certain lines. The small towns and villages, no. They would have to be dropped; exactly what happened in the United States.

Mr Maves: With regard to small lines, Mr Carroll had talked about Freedom to Move. Do you remember that?

Mr Noddle: Yes.

Mr Maves: Some of the communities that are mentioned as losing service are Bracebridge, Huntsville and Kirkland Lake. We've just heard a smaller operator previous to yourself say they would actually increase the service in those communities. How does your position jibe with that?

Mr Noddle: On either side of the coin, you will hear the pros and cons of either position. You'll hear that with deregulation some communities will gain service and on the other side of the coin there will be numerous communities lose service. Deregulation would make it a free-for-all in a dog-eat-dog atmosphere, and then people lose out in the long run, as they did in the United States.

Mr Colle: The real catch-22 in this bill is that they've signalled Quebec to hold on to January 1, 1998. We're going to deregulate. Quebec is sitting in the bushes across from Hawkesbury, saying: "Okay, they're coming in here. They're going to deregulate. We're just going to pick off this Ontario industry."

Mr Noddle: Quebec is sitting on top of the world if we deregulate. It's going to be a one-way street for those people, and Manitoba operators also. It —

Mr Colle: Sorry to interrupt, but the only way they can really fix this error they've made is to say, "We're not going to deregulate unless we get a level playing field with Quebec and Ontario operators get the same entry into the Quebec market that they're getting into our market."

Mr Noddle: Absolutely.

Mr Colle: And that's not in this bill.

Mr Noddle: No.

The Vice-Chair: Thank you very much for attending this afternoon.

1640

ONTARIO SCHOOL BUS ASSOCIATION

The Vice-Chair: I would ask that Fred Thompson and Rick Donaldson come forward on behalf of the Ontario School Bus Association. Welcome to our hearing process.

Mr Fred Thompson: Good afternoon. My name is Fred Thompson. I'm the vice-president of the Ontario School Bus Association, otherwise known as OSBA. I'm also the general manager of the Metro Toronto division of Charterways Transportation. My colleague Rick Donaldson is the OSBA executive director.

The OSBA is a voluntary association representing 240 private sector school bus companies, plus 60 school boards. Our fleets vary in size from one bus to 2,700 buses. We enjoy about 75% representation of the total industry in Ontario. Our organization is headed by a volunteer board of directors. To quote from our mission statement, "Through advocacy and education, we strive to create an environment that enhances the long-term safety record, stability and viability of our industry." I trust this will help you to put our remarks into context.

We wish to appear before the committee today to express our support for economic deregulation of bus transportation industries in this province. More specifically, we came to support Bill 39. We also have a few observations on this legislation to offer.

In February of this year, the Ontario School Bus Association wrote to the transportation minister urging an early end to economic regulation of Ontario bus transportation industries. By "early," you should know that we supported Minister Palladini's original target deregulation date of April 1, 1996. At that time, we were aware of requests from some charter/tour operators and scheduled

line run carriers for a transitional period that would allow a gradual adjustment to open market conditions. The Ministry of Transportation, working in consultation with industry, arrived at the interim regulatory mechanism ultimately described in Bill 39.

As the school bus industry, we feel no strong need for such an interim regulatory mechanism. Our accustomed method of demonstrating how public necessity and convenience are served was by presenting to the former Ontario Highway Transport Board a contract already awarded by a board of education. Very seldom, once such a contract is produced, is our operating authority ever contested or otherwise called into question.

However, we recognize merits in Bill 39 and are quite prepared to comply with the new legislation until January 1, 1998. We feel the transition period will allow adequate time for complementary safety regulations and important reciprocity agreements to be completed. Of course, we are anticipating open market conditions after that date. We share the Ontario government's view that removing bureaucratic red tape and barriers to entrepreneurship will ultimately benefit both the bus passengers and the bus transporters.

Remember that school buses are to be found in virtually every county in the province. Consider for a moment that school buses are historically underutilized outside of school hours. You will quickly realize what we realized: After January 1, 1998, the school bus industry will be well placed to extend our excellent safety and service record to broader community transportation needs all over urban and rural Ontario.

Indeed, our industry welcomes fresh challenges and opportunities to compete in new markets. When all the safety factors are weighed, when all the costs are counted, our school bus operations consistently excel. For decades we have been the safest, most secure and most cost-effective transporter of students in the province. Last year alone, we provided over 296 million safe rides. We know we can maintain this enviable record. At the same time, we can begin to serve public necessity and convenience in ways which would likely have remained closed to us under the old system of economic regulation.

This committee may or may not be aware of the province's recent community transportation review, or CTR, initiative. Essentially, CTR has been exploring ways to use existing provincially funded transportation resources more effectively. Making maximum use of investments is something we strive to do daily in our own operations, so naturally the OSBA has been supportive of the CTR. It is clear to us that ending economic regulation of Ontario's bus industries is one step forward in realizing the fundamental objectives of the CTR.

There is just one word of caution we would offer you today pertaining to the effects of increased competition on Ontario's bus industries. We do not doubt the potential for open market conditions to better align the price of bus transportation with the cost of providing service, except in one special scenario.

Substantial Ministry of Transportation subsidies paid to municipal public sector transporters have in the past allowed them to offer student transportation services to

boards of education at deep discounts. Transportation cross-subsidizes education, you could say. But of course the ultimate cost is borne by Ontario taxpayers who may, but more likely do not, derive any direct benefit. Let me elaborate on that.

For decades our industry has observed large portions of municipal public transit fleets become dedicated to student transportation, even though the costs of using those transit vehicles can actually be as much as four times higher than for standard 72-passenger school buses to provide the same service. Some municipal public transit costing models of which we are aware simply neglect to consider maintenance, administration or even capital cost components adequately. Only the chronic lack of full-cost accounting practices by transit properties, and perhaps also by the province, allows this wasteful situation to persist.

After levelling the playing field, because in our perception that's precisely what economic deregulation is going to do for bus transportation in Ontario, we urge government to keep the field level. Make sure all the costs to all the ministries are properly accounted for when comparing public sector and private sector service providers. To this end, we appeared before the standing committee on public accounts earlier this year in support of the Provincial Auditor's proposed amendments to require full-cost accounting and value-for-money audits in the MUSH sector.

I'd like to thank you today, members of the standing committee on resources development, for your time and attention. The Ontario School Bus Association supports the work Bill 39 seeks to accomplish, and we'd be pleased to answer any questions at this time.

Mr Dave Boushy (Sarnia): Could you elaborate a little more on the changes and how they reduce the red tape and lessen the burden on the school bus industry?

Mr Rick Donaldson: If I can answer that, the basic elements of this package scale down the administrative practices of the board. Historically, it has been that, as we said in our brief, once the operator presents a contract signed between a board of education and the operator, that is sufficient proof to allow an operator's licence to be issued by the Ministry of Transportation. In essence, it's a rubber stamp. We see that any administrative pruning of that is beneficial.

Mr Boushy: There have been fears from the opposition, and I've heard many comments, about smaller operators not being able to compete with big bus companies, which I consider you to be. Is that fear justified? How do you feel about these comments?

Mr Donaldson: I can only answer on behalf of the school bus industry, and I want to make it clear that I am. As we say, we have operators with one school bus and operators with 2,700 school buses, and we don't believe it will impact negatively on those smaller operators. In fact, we know in some communities, in Sudbury and elsewhere, that there are some small school bus operators doing many of the sort of community transportation services that we've referenced in here. We don't see that the small operator will be disadvantaged, and neither will the large operator. There are business opportunities.

1650

Mr Carroll: Thank you very much for your presentation. We're sort of falling into a mindset here that we in Ontario can't compete with bus operators in Quebec and Manitoba. Is that a valid concern for us to have? Is there any reason why we can't compete in Ontario with bus operators from Quebec and Manitoba?

Mr Donaldson: Well again, on behalf of the industry, I think we can compete certainly with school bus operators in Quebec. We have a safety record, we have a system in place that is well regarded and well respected. We have good relations with our Quebec school bus operators. We operate into Quebec and they operate across the borders, and there have been no difficulties to my knowledge.

Mr Carroll: School buses, by the very nature of what they're used for, tend to not get used — utilization is not 100% obviously.

Mr Donaldson: Well, it's 100% during the terms of the contract, if you will. In other words, if you're moving kids to school and home from school, it's 100% utilization in that time period.

Mr Carroll: If you were allowed to use those buses for more things, to compete with some other current operators for more business, would you see them in your industry become more efficient and in actual fact you could lower the cost of school bus transportation, which would inevitably lower the cost of education in our province? Could you see that kind of a result happening?

Mr Thompson: I guess one response I might have to that is that our industry is heavily involved right now with the Ministry of Education and Training in terms of utilizing the vehicle more in a given day. Historically, there was the morning, the noon and the afternoon, whereas now the bus is being — in some cases, we're quadrupling, close to 200 children in one period of time. The bell times are staggering. To say that they'd be able to become competitive in the charter market, it's hard to say. Right now we're addressing what we can do within the school times, what we can do to better utilize the vehicle for the boards of ed. Charters are sort of what we term as gravy. It's incremental revenue. We're looking at all of that, but right now our biggest focus is on what can we do with the board to make better use of the vehicle.

Mr Colle: I'm a bit puzzled. I hear your response to the question from the honourable member Carroll that the Quebec competition isn't a problem. My understanding of it is if you want to charter a line service and try to get a licence in Quebec, it's almost impossible, yet they can come in here and get licences and operate out of Pearson or all over the place. They're waiting on the other side of Hawkesbury to basically poach. How is it different for the school bus industry? You have no problems in getting a licence and operating and picking up passengers in Quebec? How is it different than — this is the first time I've ever heard this, that there's no problem with the Quebec situation.

Mr Thompson: I think what Rick was referring to was where we have contracts with boards of education and take excursion trips across Quebec or into another province, those communities that border the province

from one to the other, there's interprovincial boundaries, and if it's a school trip my understanding is that that's —

Mr Colle: But have you any licences where you can pick up kids on the other side of the Quebec border?

Mr Donaldson: No. On that point, I'm aware that a number of our contractors do move from Ontario into Quebec, take students into Quebec, but we're solely talking school bus operations, we're not talking line carrier runs. We're talking where a school board has contracted with an operator and those children may move into Quebec for a charter for the day through their school. Some may go to school across the border and then they come back at night. That's the context —

Mr Colle: No, but we're talking about operating let's say a fixed service and picking up regularly on the other side of the border as an Ontario-based business. It's owned by an Ontario company and Ontario operated. They would have no problem operating on the other side on a regular route?

Mr Donaldson: I can't answer that. I'm saying solely for the school bus contract with boards of education, they move into Quebec and they move out of Quebec. That's the contract I'm talking about. I'm not talking about scheduled line runs, I'm talking about our experience moving kids in and out of Quebec.

Mr Colle: Moving but not establishing a business like the Quebec operators. Let me make sure we clarify that, because I think it's certainly inconsistent with the reality of what's happening. As you well know, the line carriers, the charter carriers, are being hammered by the fact that in Quebec they don't allow Ontario businesses to set up their operation on the other side.

There are so many requirements and so many obstacles; whereas, on the other hand, we seem to have no obstacles to them setting and running out of Pearson willy-nilly. I think there are more Quebec operators out at Pearson than Ontario operators. I think it's 50 Quebec licences and six Ontario operators out of Pearson. I just wanted to put that on the record, because I think it's a bit misleading in terms of your sort of particular niche of taking students across to Quebec City and bringing them back, whatever it may be. I'm not sure what it is, but I just wanted to make sure that was clarified.

By the way, I am glad that you are advocating the Provincial Auditor's proposal to really investigate this whole MUSH sector, municipalities, school boards and so forth, where we find out exactly where tax dollars are going and how they're being used in those sectors, and they're more accountable. Certainly, as members of the public accounts committee we're trying our best to ensure that recommendation of the auditor is taken seriously. I think it would be part of levelling the playing field that private entrepreneurs like yourself have at the present time. Sometimes it is a bit of a disadvantage, no doubt.

Mr Donaldson: Thank you.

Mr Len Wood: You're going to have to help me. I'm a little bit confused here. On page 6, you're saying that you're competing against the Ministry of Transportation that is subsidizing municipal bus lines. In my community, and a lot of other communities that I know of around Ontario, the school bus industry is 100% subsidized from the Ministry of Transportation or from municipalities. In

my community they collect 60-40. It's all taxpayers' money that is being used to pay for the school buses that are out there, although you sign contracts with the school board.

What is the difference? You're getting 100% subsidized from the taxpayers in the province either through collection of school taxes at the local level or through the Ministry of Education transporting them. Municipal school buses are being subsidized by property taxpayers, the Ministry of Transportation, and they're also being subsidized by paying 50 cents or \$1 or whatever. You're saying you want to go out and compete with one group that is being subsidized partially when you are being subsidized 100% by the taxpayers in the province. I just want to get some clarification. I'm confused.

Mr Donaldson: I think, first of all, I take offence; we're not subsidized. We provide a service, and boards buy the service. There's a difference between a subsidy and a contract price. Our contracts are —

Mr Len Wood: It's taxpayers' money in the province.

Mr Donaldson: Yes, it's taxpayers' cost, but it's not a subsidy, and I'd be glad to send you a submission that we made to the Minister of Finance. There's quite a difference between a hidden subsidy and a contracted cost, where the price of the service equals the cost. If everybody were to do that on the municipal sector side, I think you'd save an awful lot of money.

Mr Len Wood: But the point I wanted to make is — and I know Ms Martel's got a question — as far as I know, school buses are 100% subsidized by the taxpayers in this province either through property taxes or through transfers from the province, as well as municipal buses are supported three ways: by individual fees, by the municipal tax levels and by transfers from the Ministry of Transportation. You're saying, from what I can gather, during the off months you want to be able to go out and compete with the other ones after being subsidized for eight or 10 months of the year 100% from the province; you want to compete with the private sector.

Mr Donaldson: Well, Mr Wood, if I had half an hour I'd love that half an hour to talk —

Mr Len Wood: I need that clarification because —

Mr Donaldson: I'd be glad to send you a submission we made, which explains it. The Ministry of Education provides grants to school boards to purchase transportation services.

Mr Len Wood: Yes, exactly.

Mr Donaldson: So it's all coming out of the taxpayer. It's a grant, it's not a subsidy. It's a grant.

Mr Len Wood: Same thing.

Mr Donaldson: No, it's not, with due respect.

Mr Len Wood: It's taxpayers' money.

Mr Donaldson: It's taxpayers' money, but there is a difference between a hidden subsidy and a service provided at full cost; and I'd be glad to send you some material which will explain that.

1700

Mr Len Wood: When Mike Harris campaigned he said, "There's only one taxpayer." So the taxpayer's putting money into the Ministry of Transportation, they're putting it into the Ministry of Education and they're feeding it out. They give you 100%, and the other buses they only give 40% or 50%. You're saying, I get 100%

for looking after all the school buses, now I'd like to compete with the private sector or compete with the municipalities and take away their business during the time you're not busy. That's the impression I'm getting here.

Mr Donaldson: No, again, the contract is only for transportation to and from during school hours.

Mr Len Wood: Yes, exactly.

Mr Donaldson: So the buses could be used outside of those hours.

Mr Len Wood: Yes, use taxpayers' money, compete in the private sector.

Mr Donaldson: I'd remind you of a statistic that in the last three years there's been a \$130-million reduction in the student transportation budget from the province. We've still been an efficient operation.

Ms Martel: I think that —

The Vice-Chair: I'm sorry, the time has expired. I'm sorry you didn't get to share the time there. Thank you very much for coming this afternoon and making your presentation.

PENETANG-MIDLAND COACH LINES LTD

The Vice-Chair: I would ask that Penetang-Midland Coach Lines represented by Brian Dubeau come forward please. Good afternoon, Mr Dubeau. Welcome to our hearing process.

Mr Brian Dubeau: I appreciate the opportunity to appear before the committee on deregulation. I have prepared a portfolio for you, and I'd just like to step you through it. I'm here to answer questions regarding our company's position and where we see the deregulation going in the bus business in the future.

First of all, our company is 129 years in the same family, the same business, in the transportation business, originating in Penetang. Over the years, we have grown to serve various parts of Ontario.

We employ approximately 650 people. The Dubeau family are basically the shareholders of the company, and I'm only one compared to six others. If you look on the front of the brochure, the fellow driving the stagecoach is my uncle Jumbo. He's passed away. The fellow on the right is my father and the fellow looking out the window is my son. He's in the back of the coach.

Our company, PMCL, to be able to sustain in a market today, to be able to branch out and to do different aspects of transportation, our business is made up of different divisions. Our head office is in the town of Midland. Our branch offices are in Toronto, Barrie, Collingwood, Orillia and Elmvalle.

The company is made up of charters and tours, primarily operating anywhere in the province of Ontario, anywhere in the dominion of Canada and all points in the United States.

Under municipal transit contracts, our company operates the city of Barrie transit contract, the city of Orillia, the town of Midland and the town of Collingwood. The reason I'm giving you this is because it all fits. You're looking at a mixed operation. To make it fit in this business today, you have to have a mixed bag of goods.

The transit operations are operations that the city own the buses and we operate the contracts for the respective municipalities.

School contracts is another part of our business where we operate school contracts for the following boards as listed, anywhere from Simcoe county right through to Metropolitan Toronto.

Transport Canada contracts Pearson airport, terminals 1, 2 and 3, under Transport Canada.

I've enclosed for you a green document that represents our intercity schedule services. I'd just like to step you through this because our company is primarily a rural Ontario company.

When I say rural Ontario, I look at the fact that the services we operate are vital services. The routes we've taken over in the last few years — we've expanded our routes, we've gone through the application route, made application to prove public convenience and necessity. That's all we know: proving public convenience and necessity.

The main core of our routes is Toronto, Barrie, Orillia, and I must say before we go any further that the routes we basically are operating are routes that have been disbanded by other operators. I use the Toronto Transit Commission, which operated the routes in conjunction with Gray Coach Lines. While we were operating our own routes down the backroads, we then got into the main corridor route, which I refer to as the Toronto-Barrie-Orillia corridor, which is the main trunk.

Just recently another route we have taken over is a route that was dropped off by the Ontario Northland Transportation. They dropped service into Port Carling and Bala this year and we now operate services into Port Carling-Bala. These are routes that we have built on other people dropping.

The Toronto-Barrie-Midland-Penetang route is another ex-Gray Coach route, again in our backyard. Toronto-Barrie-Collingwood-Owen Sound is another route dropped by another carrier, which was Gray Coach Lines. Toronto-Bolton-Alliston-CFB Borden is another route that was dropped by Gray Coach Lines.

GO Transit put services into the communities of Bolton, Vaughan, Caledon, and then dropped those services. Even while we were competing, they competed against us. They now have dropped those services. GO Transit has also dropped services in the area of Uxbridge. Private operators have gone out and picked up those routes. The routes of Owen Sound over to Southampton-Port Elgin-Kincardine have been dropped by various bus companies over the years over there.

We have put a network together that works. Our network is important to us, and deregulation will hurt our company.

Another part of our business boils down to transportation and tourism. Over the years we have developed a tourism business of cruise boat operations, the PMCL 30,000 Island Boat Cruises at Midland. This cruise boat fits in with our marketing of the province of Ontario. The Miss Midland carries approximately 40,000 passengers in the months of May to October. It fits and is part of our transportation and tourism plan. A new boat we're building for the city of Barrie this year is the Serendipity Princess, which will be a 250-passenger paddle-wheel. Again it fits.

I would like to look at the unfair competition that our company and I think other companies that operate in the province of Ontario have to face. Over the years, as I've mentioned to you, we competed heavily with Gray Coach Lines, which was a subsidized company, and even today we're doing the same thing with Ontario Northland. Contrary to Ontario Northland's opinion, Highway 7 is not the boundary for northern Ontario. Northern Ontario is northern Ontario. Even though they bought the routes from Gray Coach Lines and paid excess dollars to maintain a presence, a connection from Toronto to North Bay and Toronto to Sudbury, today we are sharing the corridor with Ontario Northland between Toronto, Barrie and Orillia, where each company is picking up each other's tickets and so forth.

Should deregulation take place, you will see that competition will control the movement of people. Competition will be that people will not be able to honour each other's tickets and people will be stranded. When we competed with Ontario Northland, they tried to exercise their strength and they failed. Competition doesn't scare us. We'll compete with anybody. But there was a problem on tickets, the freedom of movement where people can take one bus between one point and honour on the next bus where it's another carrier. This company tried to restrict the movement of people. The minister at that time, Ms Martel I believe, took a position to set them straight and I appreciate the effort that she did at that time.

1710

Deregulation hits. You're going to see a restriction of people moving between point A and point B because a company will not honour tickets. There are only so many carriers in the bus business today operating intercity routes.

I look at the GO Transit operations, heavily subsidized operations, again impeding the operations of private carriers. I'm not here to bash government. I'm just here to tell you my thoughts on how to save dollars and where there's contracting out, we as private operators are capable of doing that because we do transit operations.

I use Barrie as my backyard because I know the operations well. I don't go to sleep without looking at schedules. For instance, you have the Ontario Northland operating commuter services between Toronto and Barrie, totally uncalled for. Highway 7 does not dictate northern Ontario. They are losing dollars the way they operate, but you cannot get that through to the government as to how they operate. Look at GO Transit. They operate in competition with Ontario Northland on commuter services between Toronto and Yorkdale, Toronto and Union Station. Again, they compete with themselves.

The point I'm trying to make is that we believe deregulation will hurt our company, will hurt the travelling public. Our feeder routes between Barrie and Midland and the spurs of Barrie, Collingwood, Owen Sound to Kincardine are marginal routes. They carry few people. The aspect of operating a large bus compared to a small bus does not buy. We have operated those small buses before. Your cost of operation is there, and the idea that small bus companies with vans will feed larger bus

companies will not happen. You may think it is, you may be told it is, but it will not happen.

The system that is in place in Ontario today is what you have. The carriers that are out there that want to serve the public on point A to point B are in place. Our company was not part of the MICO group, for unknown reasons. Maybe they didn't like the style of operation, maybe they don't like how we do things. Maybe I don't believe in the philosophies of the MICO group, but I do believe in the fact that rural Ontario will be affected. You will see companies like ourselves, companies like the major carriers are going to protect their main-line hauls, the main points, the main cities.

If you look at dormant licences, Greyhound, Voyageur Colonial and Ontario Northland, if they really wanted to go out and serve rural Ontario, they have the opportunity. They have licences today but they've dropped them. They're primarily interested in point A to point B, half-load, full loads or whatever.

I could go on, but I think you may have some questions to ask me and I'm here to serve you the best I can.

Mr Colle: Just quickly, to summarize, Mr Dubeau, you're a free enterpriser. You've been taking over routes that other big companies have got rid off. You've created this network with basically no government help. You've provided the service. I see everything from Loretto to Minesing, Elmvalle, Stayner. You're all over the place, and you've done this on your own. You're also concerned about competing with government-subsidized operations like Ontario Northland and GO.

Obviously you are typical of what this government wants: free enterprise, rugged individualism, get out there and do it for yourself. You've done that. Yet you believe that deregulation is really going to hinder you who basically have a proven track record of doing it on your own without government help. Do you want to just quickly restate that to make clear how that's going to hurt you?

Mr Dubeau: What you're going to find is the fact that the cross-subsidy principle, which maybe you've talked about before, the cross-subsidy principle of charters and cross-subsidizing line run services — the main markets are markets of high populations. People who want to get into the bus business today are not interested in getting in the line run business. They're interested in getting into the charter coach business primarily.

However, you have these people on the fringes outside of Toronto where if the government agencies would open up their doors and let private enterprise share, whether on a contracting basis — I don't think I've answered your question, because I've always been a poor listener, but I hope I have.

Mr Colle: What I think isn't clear, though —

The Chair (Mr Steve Gilchrist): Mr Colle, our time is up for that rotation. We'll move on to the third party.

Ms Martel: I was interested as I was listening to you talk about the routes that had been dropped by other carriers that were subsidized, which is a bad word some days in this committee, and picked up by you, and how you ran even in competition with some of these groups and picked up those lines, I could see my colleagues across the way saying: "This is exactly the reason why

we need to have deregulation. Here it is. Here's a classic example of the people who are going to walk into this market and make things operate and provide service." Then all of a sudden you said, and I quote, "Deregulation will hurt our company."

I need you really to expand on this, because you just blew the air out of all their balloons over there. You're the person they're looking to say why deregulation is going to work in this province, yet you, as an experienced operator, one who doesn't get a government subsidy, one who has competed against government carriers and has still continued to capture that market, don't want deregulation. Why is that?

Mr Dubeau: Because of the fact that the routes we operate are marginal routes. I look at the spurs from Barrie up to Collingwood-Owen Sound; those routes are marginal routes. We rely on some cross-subsidy, whatever it is. We don't need protection, but there is some cross-subsidy. If we start seeing van pools, if we start seeing small vehicles competing against us in those corridors, what's the first thing we're going to do? We're going to protect our main corridor routes. I'm trying to protect the route system we have put in place.

We'll compete with deregulation if they open it up, but just because you go out and compete doesn't mean you're going to be profitable. We will protect. We are not afraid of deregulation. However, the fact is you may say, "The sitting group over here is the type of guy we want," but I don't believe that. I go back to the fact that the government, operating the services that they do, could very easily open up the markets for the private operations on contracting out. The routes we have are marginal routes. I look at the services we need, some assistance, some assurance, number one. If deregulation goes out, we are going to say to ourselves, do we really need the cross east-west service? But if it does go out, we're prepared. 1720

Mr Joseph N. Tascona (Simcoe Centre): Thank you, Mr Dubeau, for coming down from Penetang to join us today. You said you had picked up routes that had been abandoned by the bigger firms. My question is, if it was profitable for your firm to do that, as a smaller bus line, to take over these routes, why wouldn't it, for firms that are smaller than yourself, be in their interest to pick up smaller abandoned routes that will result as you said?

Mr Dubeau: Good question. If you look at the points that we operate, they're mixed services. We have school bus operations, we have transit operations, we've got package tour operations, we have tourism boat operations all mixing together. You need a mix to get the product sold. If somebody on their own is going to operate a sole bus system, they will not survive. You need a mixed bag of operations to make it work.

Mr Tascona: With respect to the safety issue, certainly the government's role in terms of protecting safety in this industry is not going to change by this bill, but do you think it's better for the government to use its scarce resources to enforce a system of market entry control that is arguably burdensome and onerous on both government and industry?

Mr Dubeau: Market entry control, whether it be from the outside province of Quebec or the United States,

they're just licking their chops to get at us. They're licking their chops to get at the Ontario operations' high population centres.

I want to just go on to the safety aspect. Operators today are waiting out there with 23- and 24-year-old vehicles to put them into the market. The buses we're buying today are costing us \$475,000. They'll go and buy a used bus, and we are operating under regulations of CVOR and the safety and insurance levels and so forth. Talk about \$2,000; \$2,000 today is like a ticket between Penetang and Midland when it comes to insurance. You want to put some teeth into insurance, look at somewhere in the \$15-million range and see how many people want to get into the business.

There are school boards out there today — there are contracts that are given out by municipal transit operations where they're saying millions of dollars are up front before you get into it. Some of them are not getting into it because of the fact it's a fly-by-night operation.

You've got to be concerned with regard to safety. It's a big item. One person just two days ago said, "I was waiting for deregulation to come in on April 1 because I went out and bought a bus 23 years old."

Mr Tascona: Arguably, those buses have to be inspected before they get on the road though.

Mr Dubeau: They have to be inspected —

Ms Martel: If you have MTO staff.

Mr Tascona: Ms Martel, you're not answering questions so don't interfere.

The Chair: Mr Tascona, we've used up your time allocation as well.

Thank you, Mr Dubeau. We appreciate your taking the time to come and make a presentation, and particularly I appreciate your rescheduling yourself to accommodate the cancellation we had.

Mr Colle: He's always on schedule.

The Chair: Thank you very much for coming in to see us here today.

Mr Colle: When does that boat leave Midland there, the first one?

Mr Dubeau: It started today, but you've got to look at this new boat we're putting in to Barrie. That's the one that's going to be the eye-catcher, guaranteed. I say to Mr Tascona and all you people from northern Ontario, you go through that direction, so stop in.

UNITED TRANSPORTATION UNION

The Chair: Our next presentation will be from the United Transportation Union, Mr King and Mr Tessier. Good afternoon, gentlemen. Welcome to the committee.

Mr Glenn King: Good afternoon, Mr Gilchrist and members of the standing committee. I'm Glenn King, secretary of the Ontario legislative board, United Transportation Union. With me today is Guilles Tessier, alternate legislative representative, Local 1161, United Transportation Union. We are both presently employed — and maybe I should put my head down after the previous presentation — by Ontario Northland Transportation Commission.

On behalf of the United Transportation Union, I would like to thank the resources development committee for the opportunity to provide input on Bill 39, An Act to amend

the Ontario Highway Transport Board Act and the Public Vehicles Act.

As secretary of the Ontario legislative board, I've been afforded the opportunity to speak to you today on behalf of the 2,900 rail and bus members we represent in the province of Ontario. Presently we have members operating municipal bus service in Sault Ste Marie, intercity bus service along the Highway 11, 69 and 144 corridors and interprovincial charter services.

I wish to make it quite clear to the standing committee that the United Transportation Union supports many of the initiatives of Bill 39, but we are totally opposed to the government's intention to fully deregulate the bus industry in 1998 or any move to abolish the Ontario Highway Transport Board.

It would be appreciated by our organization if the standing committee would consider our suggestions and amendments as presented today. The UTU wishes to suggest that a purpose clause be considered as an amendment to the OHTB Act in order to enshrine the continuation of service to smaller communities. Ultimately, a purpose clause would set the parameters for the operation of the board. We feel that our amendment should be noted as section 1 of Bill 39, and we suggest that it be worded in the following manner:

"The Ontario Highway Transport Board exists to protect the transportation interests of smaller communities and ensure the greatest level of service possible from commercial use of public highways."

We believe a purpose clause is a clear mission statement that the OHTB is responsible for defending the interests of citizens and smaller communities in this province, ensuring that service is a priority and the travelling public has an opportunity to commute in a comfortable and efficient manner.

If it would be suitable, we have in our brief provided a presentation which is along the lines of what the Amalgamated Transit Union has presented today, and with due respect to the Chairman, we'd like to just move on to the end of our presentation. I think you understand our points and what we would like to see amended. We hope that you will consider those recommendations when you do a clause-by-clause review of the bill.

To commence on page 3, fourth paragraph, as we stated above, the United Transportation Union is adamantly opposed to bus deregulation. Mr Palladini has indicated that the Ontario government is committed to eliminating red tape and reducing regulatory burdens in this province. He feels that continued economic regulation of the intercity bus industry represents a barrier to job creation, economic growth and investment in this province.

In a fully deregulated environment, any operator will be allowed to start up a bus service, with safety and proof of insurance being the only criteria for licensing. It is still not confirmed as to who would take over the OHTB's regulatory authority and ensure that provincial safety standards and regulations will be adhered to.

It should be recognized by this committee that the OMCA is clearly divided over the issue of bus deregulation, as you've heard today, and has attempted to lobby the Minister of Transportation. They have suggested

legislative changes, but to this point in time there has been no direct change in government direction.

If the bus industry is deregulated, many communities in northeastern Ontario could incur a loss of service. In a deregulated environment, the provision of bus service will be driven by market forces. This move will result in a no-demand, no-service scenario, much like what we've seen in the airline industry and in northern Ontario with the loss of norOntair. Furthermore, there will be no requirement to prove public necessity or convenience. We feel there will be a scooping of Ontario Northland's prime runs by outside carriers, which will increase in a deregulated environment, and further service cuts to northern communities will occur.

If Ontario moves to a fully deregulated environment, the competition for charter business will be intense, and our carriers will be operating at a disadvantage. Carriers that previously had no charter rights in Ontario will have full rights to compete with Ontario's currently regulated carriers, while still enjoying protection in their home jurisdiction. We've seen the results of this in the United States over a 10-year period, from 1982 to 1992. During the Reagan era, 7,000 communities lost their regularly scheduled bus service. We feel that there are upwards of possibly 170 communities in Ontario that could lose their regularly scheduled line services.

1730

Due to the above concerns, the United Transportation Union has made presentations to municipal councils and we have been granted resolutions from the communities of Sault Ste Marie, Timmins and Kirkland Lake. There is one provided from the town of Warren, a community that is west of North Bay by about 50 miles. I just received that this morning and I hope there is a copy for everybody.

As a point of interest for the committee, the town of Warren is most concerned. They are not a regularly scheduled bus stop. They are a flag stop. They have been in contact with Greyhound to look at setting up a depot, and Greyhound has come back to tell them that until the issue of deregulation is solved, there will be no regularly scheduled stop in the town of Warren.

On May 10, 1996, we attended the Federation of Northern Ontario Municipalities conference in North Bay. At FONOM we received a unanimous resolution to oppose intercity bus deregulation, and a copy of that resolution is attached for your information.

On numerous occasions the present government has indicated in the Legislature that bus deregulation is a viable option for Ontario. We request that you listen to the travelling public and municipal leaders. They have been instrumental in supporting this government. Please acknowledge their direction.

The Chair: Thank you very much. You've allowed about four and a quarter minutes per caucus. The questions this time will commence with the third party.

Ms Martel: Let me start with FONOM. Maybe you can just explain to the committee how many municipalities that involves, because that is certainly an important body to have spoken to and have gotten a resolution from.

Mr King: Actually, we ran a display booth at FONOM, the Federation of Northern Ontario Municipal-

ities. There were 160 delegates present from the communities in northern Ontario, and that conference was held in the Best Western at North Bay on the 9th, 10th and 11th last week. It was most interesting. In talking to many of the delegates, they do not have an understanding of what this government is proposing by throwing out a balloon regarding bus deregulation, and they were also concerned at their lack of opportunity to provide input into Bill 39.

Ms Martel: What does bus service mean in northern Ontario? You can appreciate that the northern members who have been on this committee spoke at great length in opposition to bus deregulation. We spoke about it in the context of this bill, because we certainly believe that is exactly where this bill is leading, and the minister has made that point abundantly clear, but we've also tried to point out from the communities that we represent why having adequate, regular, scheduled bus service is terribly important in our part of the province. Given that you work in this industry and you deal with these folks, maybe you can describe it better than we.

Mr King: Certainly. When we lost our — and I'm talking along the Highway 11 corridor now, and it's much the same in western Ontario with the loss of rail services. The federal government was quite effective in indicating and lobbying that northern communities were overserved with rail, bus and plane. We're coming down to an issue now where possibly the bus might be the only viable means of transportation for most people in those communities. In northern Ontario we've seen the recent loss of norOntair. There have been contracts go out to try and alleviate that problem, but there are still difficulties in awarding those contracts.

A community much affected is Kirkland Lake, which is north of North Bay by about 130 miles. They've been successful in having an air carrier come in and service their community, being I believe Bearskin, but they're still under the onus that it's ridership and if the demand isn't there, they're not going to have that service. This is a big bus community too. They're most concerned about what's going on here.

Mr Len Wood: Just briefly, I also attended FONOM in North Bay last Thursday and I can vouch for the anxiety that there was no consultation, there were no discussions whatsoever in bringing in Bill 39 and saying, "We know everything and this is what's going to happen," and railroading it through.

Just going back a little bit on norOntair, last Thursday was a good example. When you don't have norOntair service, it costs an additional \$500. I could not get out of North Bay going north unless I flew back to Toronto and then from Toronto flew over top of North Bay to get into Timmins and then in turn get in there. So just by what the government has done, it's added an extra burden of \$500 or \$600 on to the individual. Some of them can't afford it. I'm fortunate that the taxpayers are subsidizing me and my transportation and I'm able to do it.

As far as the question is concerned, do you feel that the next step is that we might lose the bus, the Ontario Northland bus, with deregulation?

Mr King: Our carriers are all concerned about a deregulated environment. There's going to be a lot of competition. If you take communities along the northern Highway 11 corridor, we touch very closely with the

province of Quebec. Kirkland Lake is one of them. We have concerns that they'll be coming in out of Quebec and cherry-picking our routes there.

Mr Carroll: Mr King, are you familiar with the Freedom to Move organization?

Mr King: Yes, I am, sir. I work very closely with that coalition.

Mr Carroll: Then obviously you're aware of this list of 170 threatened communities. I'd just like to ask you a couple of questions about that. There's quite a range of places on here, places like Armstrong in the north; the town of Wallaceburg in my riding has got 12,000 or 13,000 people in it; the town of Leamington, 12,000 or 13,000 people; Port Perry, which is basically a suburb of Oshawa — they probably wouldn't like me to say that. Can you tell me based on what evidence this list was put together?

Mr King: That was a selection of communities based on, from what I understand, looking at schedules, and I would say that some ridership figures were looked at. A lot of those communities, sir, have ridership where we draw four or five passengers out of them. Those are the communities that are in jeopardy here. When you're not running a half-filled motorcoach, you're not going to be making any money at it. That's the concern.

Mr Carroll: So it's just kind of anecdotal evidence that put this list together.

Mr King: Yes.

Mr Carroll: One of the places that's on here is Kirkland Lake. You made reference to Kirkland Lake, and Kirkland Lake has passed a motion; their town council has passed a motion. Yet Mr Walsh, who owns the bus company that services Kirkland Lake, told us quite emphatically that deregulation would have absolutely no effect on his company's ability to service Kirkland Lake.

Mr King: Is that right?

Mr Carroll: What basis do you have to refute the man who is providing the service now? On what basis do you say that, no, that service will be discontinued?

Mr King: I think if we look at what the government is proposing and if I go up there and buy myself a minivan, I'm competing in Mr Walsh's environment, and that's what concerns us. If he's not concerned about deregulation, I would think he should be.

Mr Carroll: Is there any possibility that what we have here on behalf of your organization is an element of fearmongering designed to protect the jobs of the unionized workers?

Mr King: No, sir.

Mr Len Wood: It's fearmongering on the part of the Tory caucus. That's what the fearmongering is.

Mr Carroll: I'm asking him the questions, Mr Wood.

Mr King: No, I don't think it is, sir. I don't know of anybody today who isn't concerned about their job. No job is guaranteed here.

Ms Martel: Especially with this group.

Mr Carroll: On what basis then can you justify circulating this list — and you've admitted it comes from just anecdotal evidence — telling people these 170 communities are going to lose their service if we proceed with deregulation, if it's not fearmongering?

Mr King: No. We've said they could lose them. I think if you look at the evidence that has been provided from the communities in the United States, we're very concerned about where the transportation industry is going in Ontario. Being out there with the travelling public, we want to see the people transported around.

Mr Guilles Tessier: I think you also have to realize the number of towns that would be affected that are not on this list. Those have to be taken into account as well.

Mr Carroll: On what basis, though, sir, would you have them on the list?

Mr Tessier: I can tell you right now that between Sudbury and North Bay, for instance, which is the Trans-Canada Highway, the ridership really isn't there. If any company could run non-stop through them, they probably would because it would save them time and money.

Mr Carroll: Would you not agree with me, sir, that the operators who are running the routes are the best judges of whether or not the route will continue to be viable? Do you not agree with that?

Mr Tessier: I personally think, especially in northern Ontario where, like we said, bus service is a crucial service because it's the only means of transportation for seniors and students to get home on weekends, if you read the whole fact sheet, you'll understand our whole point behind Freedom to Move.

Mr Carroll: But this, I submit, is fearmongering designed to protect union jobs.

Mr Tessier: Absolutely not.

Mr Carroll: That's all, Mr Chairman.

1740

Mr Dwight Duncan (Windsor-Walkerville): Would you agree that protecting union jobs in the province is a noble and worthy endeavour?

Mr Tessier: I would think that any job we protect in this province, whether it be union or non-union, is important.

Mr Duncan: Absolutely. Talk to me a bit about the economics of transportation, particularly in the north, and indeed in towns like Wallaceburg and Leamington, which I too am familiar with. My understanding is that a carrier like Mr Walsh, their first objective is profit, and properly so. It's my understanding that a number of these lines, without the regulatory protection, would not be profitable. Would that be your view?

Mr Tessier: Yes, generally through the way licences are awarded, the smaller communities are covered in service agreements for more profitable runs.

Mr Duncan: So that we in effect use the leverage of the profitable runs to ensure that those communities that can't be profitable on their own, like Wallaceburg and Leamington, very important towns in this province — we use the leverage associated with the more profitable runs to subsidize those towns that would not be profitable on their own.

Mr Tessier: Yes.

Mr Duncan: Would it be your view, given your experience in the industry, that the regulatory climate that has developed over the years, I suppose, has served us well?

Mr Tessier: Yes.

Mr Duncan: Are there other ways of amending the regulatory climate we've talked about that you think

could enhance service and profitability, and would you expound on that a bit?

Mr Tessier: I think anything that gives the carrier flexibility to set up a run or drop a run, if we're looking at fees — when you're looking at setting ticket prices and that, I believe the carriers need that flexibility and to not be running back to a regulatory body to get that approval so they can do it.

Mr Duncan: And your union and others would be prepared to work cooperatively to find those kinds of regulatory changes that would make Ontario more competitive and at the same time protect those vulnerable communities like Wallaceburg that will stand at least some chance of losing their service?

Mr Tessier: Sure. We're willing to work with anybody. We're out there.

The Chair: Mr Tessier, Mr King, thank you very much for taking the time to make a presentation before us here today. We appreciate you coming in.

TRANSPORTATION ACTION NOW

The Chair: Our next group is Transportation Action Now. Good afternoon.

Mr Stephen Little: We have circulated two presentations because ours is basically in two parts, and we will be reading from parts of them, so I urge all the committee members to read the entire submission to capture the full flavour of what we hope to be able to capture concisely right now.

Thanks for the opportunity to be able to present to the resources committee on this very important subject. I bring regrets from the acting executive director, Janice Tait, who unfortunately had a family emergency. My name is Stephen Little and I'm a member of the board of Transportation Action Now. I represent the board members of the organization, a coalition of nearly 100 organizations in Ontario supporting accessible transportation for the over one million Ontarians with disabilities, as well as those ambulatory disabled seniors who cannot drive or have no access to a car.

Our organization has been advocating for accessible transportation since 1985, but there are many of our constituents who have been lobbying for access since the early 1970s. Two of these people, Jean and Lew Blancher, are here with me today. In addition, our legal counsel, David Baker, will speak to you about the situation with respect to the federal regulation on accessibility on intercity buses.

Jean and Lew Blancher complained to the Ontario Highway Transport Board in 1974 that they were refused passage on an intercity bus because they were unable to board independently. Their lawyer argued before the OHTB that bus companies had an obligation to carry people who paid for a ticket and were not drunk or disorderly under section 15 of the Public Vehicles Act. The board agreed with this argument and asked bus companies as a condition of licensing to make provisions for the carriage of people with disabilities. That order has never been carried out.

From our point of view, the two levels of government, federal and provincial, are playing a game of hot potato where each side is trying to pass off responsibility to the

other for the issue of accessibility. The Advisory Committee on Accessible Transportation, which advises the federal Minister of Transport, met recently with the bus industry to try and work out some form of voluntary standards, but there has been no progress. So we have the situation in Ontario where Greyhound and Trentway Wagar are making some effort to provide access, while Voyageur, PMCL and GO Transit, the bus part, do nothing.

With deregulation, we anticipate a situation where many people with disabilities or those without a car in smaller towns and cities in Ontario will have no option at all to travel outside their community. Leaving accessibility to the private sector will not work, as we have seen by the reluctant performance of some members of the bus industry to date.

Prior to his election as Premier, Mike Harris stated in response to a written question from our organization that, "A Harris government would work to ensure that all new intercity buses purchased in Ontario are fully accessible."

My questions to this committee today are: Does the Mike Harris government support the integration of people with disabilities into the mainstream of Canadian life? If so, as part of that commitment, will you ensure that barrier reduction in bus transportation services for persons with disabilities will occur? How can you ensure this will happen except by regulation, not by deregulation? If the Harris government does support barrier-free bus transportation, will the minister affirm in Bill 39 that the Ontario government will ensure that persons with disabilities are accommodated?

If the government is interested in economic growth and investment, excluding a large number of people from this form of transportation seems to run contrary to that commitment. Many people in Ontario need accessible intercity bus services to get to school, employment, hospital and medical appointments as well as social and familial activities. All of these activities promote growth and enhance the quality of life for the citizens of this province.

The future of intercity buses in Ontario has now become a lottery. Accessible service is even more problematic. If you need accessible transportation, you are in double jeopardy with this new legislation.

Through this committee, we urge the Minister of Transportation to (1) commit his government to the principles of integration into the mainstream of Canadian life for people with disabilities in this legislation by incorporating the federal access clause, section 63, into the amended Public Vehicles Act; and (2) provide the interim system with the regulatory power to fulfil the commitment made by Mike Harris to purchase only accessible intercity buses.

I'll now give David Baker an opportunity to explain to you how this matter was addressed at the federal level.

Mr David Baker: In 1985, when the federal government proposed deregulating modes of transportation under federal jurisdiction, it was agreed that the government would continue to regulate safety, as the current Ontario minister proposes doing, through the process of deregulation with respect to the intercity bus industry. But the federal government also felt it was essential to continue

to regulate accessibility of federal modes of transportation.

At the present time, the intercity bus industry in Ontario is the only mode of transportation where there is no provision and no authority to provide accessibility standards for persons with disabilities. It's the only mode that is in that situation.

In 1987, the federal government introduced specific legislation — we have the sections at pages 3, 4 and 5 of the supplementary submission — and we have reviewed them carefully. With very minor changes, these sections could be inserted into the Public Vehicles Act of Ontario. In other words, the wording need not change, assuming the government is persuaded, as the federal Conservative government was in 1987, that there was, notwithstanding the desire to deregulate, a need to continue to regulate both safety and accessibility.

1750

The response to this issue at the federal level is as follows: When Ontario changed its position in 1993 and indicated that it would be supportive of there being national standards with respect to the intercity bus industry, an effort was made to develop a national standard. That consensus has disappeared as a consequence of the election in Quebec. There is no agreement from Quebec to a national anything, least of all a standard in this area. However, what we are proposing would permit the adoption of any national standard if it were established.

The proposal in 1993 was that there be a national standard but that it be implemented under Ontario legislation. As a consequence of the *Blancher* case and other cases in which we've been involved involving the Greyhound takeover of Gray Coach and so on, it is clear that under the current legislation if there were a national standard it could not be enforced in Ontario; it could be in other provinces, but it could not be enforced in Ontario without this proposal.

We are submitting to you that if the promise of the Premier is to be kept and if the very important element of accessibility is to have any protection at all, legislation such as that which we are proposing should be adopted now into the Public Vehicles Act.

The Chair: Thank you, Mr Baker. That's the end of your submission, so I appreciate that.

Mr Carl DeFaria (Mississauga East): My question is to Mr Baker. I was reviewing your research, and in your research you seem to indicate that the issue of accessibility is with the federal government and it has been delegated to a board in Ontario. As far as intercity transportation is concerned, it was delegated to the Ontario Highway Transport Board. Is that correct?

Mr Baker: No. Perhaps I should apologize if that was how you read what I was saying. The federal government, in the 1960s, delegated authority for buses that go over provincial boundaries. So a bus from Toronto to Quebec is a matter of federal jurisdiction. Because a bus from Toronto to Kingston would be provincial, it was felt it should all be in the hands of the provinces, and the federal government got out of the business.

There was a feeling that it would be useful to have a national standard. There was preliminary agreement to a

standard. This would not be regulated; it would simply be by agreement of a federal-provincial-territorial committee. But it would require that there be an amendment such as the one we're proposing here to enforce a national standard if one were ever to emerge.

Unfortunately, what's happened since 1993 is that there's a change in the federal government and also a change in the Quebec government. There is no longer a consensus for a national standard and each province is left to go its own way.

Mr DeFaria: Right, but my question is that the delegation was to the Ontario Highway Transport Board, not to the province of Ontario, because as you know, in constitutional law the federal government could not delegate to the province; it can delegate to a provincial board but not to the province, under the BNA Act and case law.

Mr Baker: I'd have to do some research.

Mr DeFaria: The problem I have with your request for some legislation from Ontario is that it may not be possible under constitutional law.

Mr Baker: The problem I have with that, sir, is that that's exactly what was proposed in 1993 by the federal-provincial-territorial agreement. With all due respect, I assume that if there was that kind of an agreement, certainly it could be done. There is nothing preventing the province from developing its own standard. You may be right, maybe there can't be a national standard, but there certainly can be a provincial standard within the province, which is exclusively within provincial jurisdiction. I would submit to you that that's really no answer to the point I've made.

Mr DeFaria: What I'm talking about is that once the federal government delegates power to a board, the federal government can legislate on accessibility and other things and provide those directions with the delegation. You can't expect the province, which does not have the power under the BNA Act on intercity busing, to create laws that it doesn't have the power to do.

Mr Baker: The province has exclusive jurisdiction over intercity busing within the province. The difficulty I have with what you're saying is that there is nothing preventing the province from establishing standards; that's what we're asking that the province do until such time as there is agreement. There was never any intention of federal legislation. The intention was that there would be a national standard which all the provinces and territories and the federal government agreed to so there'd be a uniform standard. There would be nothing preventing the Ontario government from taking what was proposed and agreed to in 1993 and saying that that's the Ontario standard and hoping that everybody else would adopt the same standard so there would be a uniform standard even without a national agreement, which there couldn't be without Quebec.

Mr Colle: I guess it's no different than when the past NDP government mandated that all new inner-city buses, any new ones, be accessible. They took that action in 1992 or whatever it was. There's precedent for doing that. In essence, I guess you're asking this government to take Mike Harris at his word. He said he would do it, and there is the obvious indication from the Premier that he

supports this. This would enable people with disabilities to access buses that go from cities to towns across Ontario. In terms of the federal statute, how specific is it in terms of accessibility on these buses?

Mr Baker: There's no federal statute that deals with accessibility of buses. I'm sorry if I've confused people on this point. There was simply a standard, which means an agreement reached between the federal, provincial and territorial governments, based on some work done by the National Transportation Agency. That standard is not now a national standard, because Quebec is not prepared even to come to the table to discuss it, let alone sign anything.

We have the work all done. There was basically agreement — Ontario bought in 1993 — that could not be implemented without a change such as the one we're proposing to the Public Vehicles Act. That would have had to happen in any event, even if Quebec had agreed. The point is that the standard is known. Everybody knows what's required. All that need be done is that there be a mechanism for enforcing the standard, which there is not at the present time. We would ask that there be a standard.

Mr Colle: You're asking really for the mechanism to be incorporated in an amendment to the Public Vehicles Act, which is strictly under provincial jurisdiction, which we have before us today. That's being amended.

Mr Baker: Absolutely.

Mr Colle: You're asking for a very simple amendment that would allow for an accessibility mechanism to be incorporated in the amendments to Bill 39.

Mr Baker: Which is exactly what the federal Conservative government did in 1987 when it deregulated air.

Mr Colle: Right now in Bill 39 or the proposed amendments there is no reference to doing that. You're saying that is an omission and that should be included in the amendments.

Mr Baker: That's right.

Mr Colle: On a point of order on that, Mr Chair: What is the mechanism here in terms of making amendments?

The Chair: They must be presented in writing to be considered by the committee.

Mr Colle: They must be presented in writing. Is this adequate in terms of being presented in writing?

The Chair: No. It would have to be couched in the form of a motion.

Mr Colle: Those motions can be presented — I know we're going through clause-by-clause —

The Chair: At any point prior to reaching the relevant clause.

Mr Colle: I'd like to move that this amendment be brought forward as on page 8, that "The mechanism selected by the federal government (ie, sections 63.1, 63.3 and 63.4 of the National Transportation Act)" —

The Chair: Mr Colle, if I can stop you, we're not in clause-by-clause yet. There's no mechanism to accept a motion per se during a submission. If you want to do that at such time as we're in clause-by-clause, it would be in order at that time.

Mr Colle: I can present that at that time. That's all I was really asking.
1800

Ms Martel: Maybe we can ask legislative counsel if they might consider that we're going to do that and take

some time to look at it. I think the reference you had is actually found on page 3. Was that the text of the federal legislation?

Mr Baker: That's correct, and Mr Colle was referring to the section numbers at page 8.

Ms Martel: I think you will get some support from the two opposition parties in terms of moving that amendment, and certainly we hope the government members would see fit to move that as an amendment, given that we are dealing with the Public Vehicles Act today and changes to it, and given that their Premier made a very specific commitment to this. I hope they would not want to see themselves not supporting a commitment the Premier made, especially during an election campaign. It could be very important.

Mr Len Wood: Yes, or a by-election —

Ms Martel: We just might, given the Premier also said he would resign if he didn't keep his promise on May 10. We'll see what the outcome will be.

Let me go back to your concerns around regulation, because I think they're very serious ones and they're ones the committee, regardless of our partisanship, should probably consider. We have a position today where the very good folks you brought with you many years ago raised this problem with the Highway Transport Board. There were supposed to be some changes to allow for accessibility, and yet, even in a regulated environment where we have a board that can provide some direction, where we have some legal means to force people to provide that direction and to comply with that direction, we've seen that some of the bigger bus companies have no intention whatsoever of complying. Really, your concern is that if you allow smaller companies in, certainly people who are looking at operating minivans, without any kind of protection, you're not going to see accessibility for a long time in many parts of this province.

Mr Little: The issue seems to have escaped resolution simply because there was this dispute as to who actually had jurisdiction over it. With our proposals anchoring it firmly in the Ontario provincial jurisdiction, we would hope there would be no more avoiding any resolutions. If you deregulate and do not have any aspect addressing accessibility — because one recognizes that there is certainly the intent to continue regulating the safety, why not address the issue of accessibility in the same way? If we want to firmly anchor it in the provincial jurisdiction, that way it will get done and it will be enforceable.

Ms Martel: Your position is that if the minister obviously, by his statements in the House, sees that the province and in essence his ministry still have a role to enforce safety, this would be a very significant and very important addition to the role he already plays, not only guaranteeing safety but guaranteeing accessibility, and as a minister of the crown, he can do that and he should do that?

Mr Little: Correct.

Mr Lew Blancher: Not only our safety but the drivers' safety.

Ms Martel: Yes, not only your safety but the drivers' safety as well. Absolutely. Thank you very much for coming here today and taking the time to do so.

The Chair: Yes, thank you all, Mr Little, Mr Baker and the Blanchers. We appreciate your taking the time to

come and visit with us today and to make these presentations. We appreciate your comments.

That being the last presentation to be made before us today, we now will move into clause-by-clause consideration of the bill. The clerk will be distributed an assorted packet of amendments already presented by the two opposition parties.

Legal counsel has asked for a minute or two. She wants to be involved while we debate the sections, plus she's just getting some guidance from Mr Colle.

1810

I call the room back to order and commence with our clause-by-clause consideration. Based on what I've received so far, seeing no amendments proposed for subsections 1(1) and (2), are there any comments, questions or amendments on those two subsections?

Ms Martel: I want to add a point in there but it wasn't subsection (1) or (2), it was (3). Do you want me to do that now?

The Chair: I was going to deal with that as the next step.

Ms Martel: Okay, I'll wait.

The Chair: If there are none, I'll put the question. Shall the motion carry?

We will deal with your amendment first, sorry.

Ms Martel: That's okay. I just wondered too if you were going to vote on the whole question.

The Chair: Just doing this job once every three months on different bills, you get rusty.

Ms Martel: I move that section 1 of the bill be amended by adding the following subsection:

"(3) Section 2 of the act is amended by adding the following subsection:

"Purpose of board

"(4) The purpose of the board is to protect the transportation interests of smaller communities and to ensure the greatest level of service possible from the commercial use of public highways."

As a brief explanation, you heard a number of the groups that came forward, particularly from the union side, suggest that we should have an actual purpose clause that would outline that the role and responsibility also of the board is to ensure that we are providing service to smaller communities, given that those carriers are using public highways.

We didn't put it into a purpose clause, but we are requesting that it be inserted now as part of the purpose of the board, which is to the greatest level possible make sure that small communities still continue to have some service in this province.

Mr Ouellette: The introduction of such a purpose clause is not necessary because the government's direction to the board is already provided for through the policy statement issued to the board. Currently, the board operates in deciding on licence applications on the basis of a policy statement which sets out the form elements to be considered in determining public necessity and convenience. It does not make sense to add a vague statement of intent at this point, given the temporary nature of the interim regulatory system.

In any event, the board will continue to be fully accountable to the Minister of Transportation and would

not be allowed to stray from the government's policy directions. For that reason, we will be opposing the amendment.

Ms Martel: On a point of clarification, I'm assuming it is the government's intention to bring in a second bill before January 1, 1999, which would permit full deregulation. Is that correct?

Mr Ouellette: The House leaders discussed this and are aware of the situation.

Ms Martel: I'm not sure I have an answer to my question, and I will tell you why I'm raising it here. If we're not going to see another bill that moves us to full bus deregulation and in fact we will just have a phasing in of bus deregulation in time for 1998, you will not have any other mechanism to put in a clause that outlines the importance of providing bus transportation to small communities.

I heard you say that right now you've got an interim board with policies and procedures that can take direction from the minister etc. I'm assuming that with full deregulation, we probably won't have a board. I'm not clear what the mechanism will be around enforcing safety. I'm assuming that's going to come through the ministry, and I worry then that any kind of statement of principle around how important I think all of us see bus services to be will have nowhere to be put as a statement of policy, principle or anything else.

That's why I'm asking the question about whether or not we're actually going to see a bill on bus deregulation, because then it could be put there.

Mr Ouellette: The intention is so.

Mr Colle: Just briefly, I don't see the harm in essentially putting in a general intention of protecting transportation interests for small communities — I think that's the intention of the government — and to ensure the greatest level of service possible from commercial use of the highways. It certainly doesn't contradict in any way, shape or form the policy statements of the government, and I don't see any drawback in putting it in there, except it does make a commitment to provide a high level of service.

The Chair: Any further comments? Seeing none, I'll put the question. Shall Ms Martel's motion carry? All those in favour, raise your hands? Those opposed?

I deem the amendment to fail.

Are there any further amendments to section 1? Seeing none, I'll put the question. Shall section 1 carry? All those in favour? Those opposed?

Section 1 carries.

1820

Are there any amendments to section 2 or any comments or questions? Seeing none, I'll put that question. All those in favour of section 2, raise your hands? Contrary?

Section 2 carries.

I see there is at least one amendment to section 3. Mr Colle, are you going to speak to that?

Mr Colle: The intent here is to ensure — I think it was one of the deputants put forth a concern about the problem we may have with limited access to the board if it only sat on a part-time basis, and I think this is trying to make it possible for the board to extend the sitting

days to more than the three days. I think that was brought up by Mr Hugh Morris. He thought that would facilitate dealing with matters in a more —

The Chair: Mr Colle, forgive me, but to make the motion, we actually have to have it presented orally. If you could read the motion.

Mr Colle: I move that section 3 of the bill be struck out and the following substituted:

"3. Sections 7, 9 and 10 of the act are repealed and the following substituted:

"Member designated to act for chair

"(7) The chair may designate another member of the board to act as chair in his or her absence.

"Same

"(2) If the chair cannot act and has not designated another member to act as chair, or if the office of chair is vacant, the minister may designate a member of the board to act as chair.

"Same

"(3) A member designated under subsection (1) or (2) may act as and has all the powers of the chair.

"Staff

"9. The board may engage and employ such persons as are necessary to carry out the board's functions."

Again, the basic intention here is just to try and ensure the board has the capacity to meet on a full-time basis when it seems fit that it has to, to meet the demands placed before it.

Mr Ouellette: This motion would remove provision for a part-time board which is needed to reduce the cost of the board and make it flexible to meet the demands which we anticipate to reduce as the deregulation date approaches.

Section 8 of the OHTBA also has a provision against conflict of interest which is presently in the act.

For those reasons, we would oppose this.

Mr Colle: I just think that matters are going to be quite complex in some cases, and you may need to give that board the flexibility to deal comprehensively with issues. I was just trying to facilitate that. In the long run, it may save you money by dealing with something thoroughly and save the applicants some time and energy too.

The Chair: Any further comments? Seeing none, I'll put the question. Shall the motion carry? All those in favour? Those opposed? I deem the motion to fail.

Any further amendments to section 3? Seeing none, I'll put the question. Shall section 3 carry? All those in favour? Contrary?

Section 3 carries.

Seeing no amendments proposed for sections 4 or 5, I'll ask if there are any comments, questions or amendments for those sections. Seeing none, I'll put the question. All those in favour that sections 4 and 5 carry? Contrary?

Sections 4 and 5 carry.

Section 6: I see two questions. We'll start with yours, Ms Martel.

Ms Martel: I move that section 6 of the bill be struck out and the following substituted:

"6. Sections 16, 17, 18, 19 and 20 of the act are repealed and the following substituted:

"Power to review

"16. The board may rehear any application and may review, amend or revoke its decisions, orders, directions, certificates or approvals and may within its jurisdiction review, amend or revoke any decision, certificate or approval made before October 17, 1955, by the Ontario Municipal Board under the Public Vehicles Act or the Public Commercial Vehicles Act, being chapters 322 and 304, respectively, of the Revised Statutes of Ontario, 1980, if, upon application by any person, a majority of the members of the board is of the opinion that,

"(a) there is cause to doubt the accuracy, conclusiveness, authenticity or like property of any evidence received and relied upon at a previous hearing;

"(b) there has been an error in the administration of this act or the Public Vehicles Act; or

"(c) a rehearing would otherwise serve the purpose of the board as set out in subsection 2(4), as amended."

So that members understand what we are trying to do, this refers to the power of the board to rehear a hearing or any other application. You will know that under the changes the government's proposing at this time, that provision would be eliminated from the bill. I think we heard a number of people make a deputation to say that the board should still have some ability to rehear cases, because from time to time, while we don't like to know that it is so, information might have come before the board that was not accurate and people made a decision based on that information. Or secondly, there may be an error in judgement or an error in law that is only caught afterwards. Right now, as I understand it, the position the government is taking would not allow for a rehearing, and I think we are requesting that some specific provision be put back in to allow that to be so.

Mr Ouellette: The right to a rehearing would not likely provide a carrier but would only delay the inevitable outcome. Unless the original decision was blatantly unfounded, it would be unlikely that the decision would be set aside as a result of the rehearing. If the original decision was blatantly unfounded, then it was probably also in violation of natural justice or jurisdiction and could be jurisdictionally reviewed under the Judicial Review Procedure Act and under the Statutory Powers Procedure Act. A delay would be undesirable and sanctioning, because there is a stay of a stopover pending appeal by virtue of the Statutory Powers Procedure Act.

There is an additional cost associated with a rehearing which would be onerous on the applicant, who in a user-pay system would be forced to invest more money to reach a decision, including greater legal fees.

Also, the industry has spoken with a single voice on this issue that the rehearing provision is not needed and that all unnecessary appeal mechanisms would compromise the effectiveness of the interim regulatory system.

For those reasons, we would oppose the motion presented.

Ms Martel: I would like some clarification from counsel or ministry staff who are here, because it's also my understanding that in fact the Statutory Powers Procedure Act is affected and an appeal under that act would also be compromised by the amendments the government is moving forward with. So I want some

clarification, because it doesn't seem to me that is a route that will be open after the bill is passed.

Secondly, from what I heard the member say, there is an assumption that always all of the evidence purported by an operator will be correct and anyone intervening will do so for a frivolous or vexatious matter. I don't think that is the case. There are probably some circumstances, albeit we hope there aren't many, where perhaps the information put forward by an operator was in fact incorrect. So you have others who lose service or don't get a chance to operate as a consequence.

Clearly there can be some mechanism arranged by the board to be sure they don't deal with frivolous and vexatious matters, that they truly only have a rehearing in the case where obviously there has been some judgement in error, in law or some obviously false information that was provided. In those situations, there has to be some other mechanism of appeal.

Mr Ouellette: When there is an error in law, there is the ability for the courts to review the decision in any event. There are small, minor problems such as name changes and things like that that allow for a review by the courts.

Ms Martel: I'd still like an answer to the question as to whether or not what the government is doing also changes people's ability to continue to appeal using the Statutory Powers Procedure Act. It was my intention that it was. If that's not the case, then I'd like to be corrected on that, but that is part of the reason why I'm moving forward this amendment.

The Chair: Mr Ouellette, you can delegate the answer if you prefer.

Mr Murray Forbes: My name is Murray Forbes. I'm a lawyer with the Ministry of Transportation. My understanding is that if there's a denial of natural justice or a jurisdictional error, an application could be brought for judicial review before Divisional Court. This would give protection in cases of blatant refusal, for instance, to take jurisdiction or where one side was not given an opportunity to know what the case was to meet, or something like that.

1830

Ms Martel: So it is not correct to say that people then can still continue to try and find natural justice through the Statutory Powers Procedure Act. That's not an option that's left open to them now.

Mr Forbes: Well, the application would be brought under the Judicial Review Procedure Act and the Statutory Powers Procedure Act to a High Court to review the decision made by the board, if there has been a denial of natural justice by the board.

Ms Martel: So people's option is to go through court then, which would probably be fairly expensive.

Mr Colle: Certainly, one of the worrisome aspects about the bill is that the traditional appeals to cabinet are removed and appeals to Divisional Court are removed. I think we're going to be in most cases dealing with a one-person board whose decisions are final, and if it happens there's an error — because some of these matters are very technical. For the ordinary person, a small operator, before the board, there is no recourse. They can make an appeal to I don't know what level of court, but that is

going to be even more expensive than making an appeal before the Divisional Court. Because going on the basis of negation of natural justice is quite a complex matter before a court, and I really wonder how many small operators will be able to undertake that appeal.

It's really making it almost impossible for someone to question the decision of this one-person tribunal, and I don't think that is really going to treat people fairly, especially, again, if you have a small matter that may be a technical error. There's got to be a way of at least presenting that and going to I don't know what level of court — maybe the solicitor would know that — where you would make that appeal. Would you go to a Supreme Court, the provincial court?

Interjection: Divisional Court.

Mr Colle: But you can't go to Divisional Court, because they've said you can't.

The Chair: Mr Forbes, can you clarify that?

Mr Forbes: If there was a technical error, if there was a typographical error or something of that nature, there is power to go back to the board to have it corrected. That's right in the Statutory Powers Procedure Act. That's not actually an appeal, that is just an ability for the board to correct technical-type errors.

Mr Colle: No, but I'm talking about the fact — let's say the board didn't take into consideration that there was a certain costing related to this one route and that was certainly misrepresented or it was misunderstood that the dollar amount and the impact of that on the decision was going to give undue financial hardship to that company, for instance. That's not technical, that's something that maybe somebody — people can make mistakes. This one-person tribunal can make a mistake.

Mr Forbes: There would be no right of appeal on an error of law or fact. There would only be a right to review in the case of want of jurisdiction or —

Mr Colle: So if there was a gross error made by the person making the decision on that tribunal, on the board or agency, whatever it is, there is no way you could appeal it then.

Mr Forbes: Unless the gross error went to the root of the jurisdiction or the gross error resulted in a denial of natural justice.

Mr Colle: So where would you go then?

Mr Forbes: Then you would go to Divisional Court for a review of the board's decision.

Mr Colle: But doesn't that contradict? I'm just looking at the preamble, the explanatory notes. It says, "Appeals to Divisional Court...are no longer available." Isn't that a contradiction?

Mr Forbes: No —

Mr Colle: So in other words, you can still go to the Divisional Court?

Mr Forbes: Yes, you bring an application for judicial review. It would not be an appeal of the decision. You'd ask the superior court to review the decision of the board for denial of natural justice, or a jurisdictional error. You wouldn't appeal on the legal questions or the factual question. You would ask the court to review whether the tribunal had jurisdiction to make the decision it made, or whether the people who appeared before the tribunal had been treated fairly, basically.

The Chair: Thank you, Mr Forbes. Mr Colle, any further questions?

Mr Colle: No, that's fine.

The Chair: Any further questions? Comments? Seeing none, I'll put the question.

All those in favour that the motion carry? Those opposed? I deem the motion to fail.

Mr Colle, your motion is next.

Mr Colle: Yes, I'm just trying to keep track here. The next motion deals with the — if I could check with our legal counsel. This is the same section. I think what I was asking for there, if I'm not mistaken, is the right to present a motion. I just want to make sure I've got the right one here.

I move that section 6 of the bill be struck out and the following substituted:

"6. Sections 17, 18, 19 and 20 of the act are repealed."

What I am just trying to accomplish here is that the appeal mechanism —

The Chair: We've seen this before. Could you just re-read the last two words?

Mr Colle: Okay: "are repealed."

The Chair: Nope. Oh, I beg your pardon. So our copy is correct?

Mr Colle: Yes, "are repealed." What I'm trying to achieve here is that there be an appeal mechanism left in the act. That's the objective of this motion before you, just in terms of trying to allow people to at least have recourse for an appeal.

Mr Ouellette: For the same reasons that we opposed the NDP motion, we will be opposing this motion. It should also be noted that in the courts you can recoup your costs as well.

Mr Colle: Just one second. You can recoup the costs depending on what the judge's ruling is. Let's be clear on that. A lot of people have been prohibited from making that appeal because they may have court costs awarded. So it's not an automatic recouping of costs. That's why I think it's a bit of a concern for people.

The Chair: Any further comments? Seeing none, I'll put the question. Shall the motion carry? All those in favour? Opposed? I deem the motion to fail.

Shall section 6 carry? All those in favour? Opposed? Section 6 is carried.

Section 7. The first motion up will be Ms Martel's.

Ms Martel: I move that subsection 22(3) of the Ontario Highway Transport Board Act, as set out in subsection 7(1) of the bill, be struck out and the following substituted:

"Public and oral hearings

"(3) Despite subsection (1), all hearings of the board shall be open to the public and, if any party to a hearing requests an oral hearing, the hearing shall be an oral hearing."

What we are suggesting in this section, and some of the presenters made reference to it as well, is that there are some real advantages to having a hearing that is open to the public because it involves the public interest, bus service, commercial use of public highways, but secondly that we believe it makes a lot of sense to have an oral hearing, not just in the case if all the parties agree.

We heard some presenters say today that in most cases hearings last all of a day and a half, that what it does when you have an oral hearing is allow people to be cross-examined by the board, but also if there are petitioners or intervenors or objectors, they as well have the opportunity to cross-examine witnesses. In that way, you might have much more information that comes to the fore than you would just through a written appeal.

We don't see that an oral hearing would lengthen the time of a hearing before the board. I think, in fact, it would probably reduce some of the time because of the allowance for cross-examination by the parties involved. I certainly think it would be a much more public process, which I think it should be given that what we are talking about is a service for the public on transportation corridors that are in essence owned and maintained by the public as well.

1840

Mr Ouellette: The industry wanted to keep the costs down, and a significant part of the industry wanted written hearings. Unless credibility is directly at issue, natural justice should be met by written hearings. Cost savings would include costs of hearings, a hearing room and services, which is transcripts, costs of calling witnesses, increased legal fees etc. Also, scheduling would not be a problem, so that the decision is more likely to be reached quickly. Written hearings are public hearings, just as are oral hearings.

Our view is that the bill has been drafted to achieve flexibility and the balance between the use of oral hearings and the use of written submissions. In fact, the board's consideration of enforcement and penalties will rely on oral hearings unless all parties agree to written submissions. In the case of applications, oral hearings are possible where all parties agree to an oral hearing or where one party requests an oral proceeding and the board agrees.

For those reasons, we'll be opposing.

Ms Martel: I just don't understand what the huge cost is here, and I guess I disagree that a written hearing is a public hearing when you have no opportunity to cross-examine either from members of the board or from intervenors. I don't know how that gives people any more access to getting all the information.

It might be that the industry recommended this happen. I suspect there are a lot of people who would like to intervene who will not have an opportunity to because all of the parties won't agree. If you've got the public that's coming in and is saying that someone should not be allowed to discontinue a route because it's going to affect their community, it's not going to be in the bus operator's interest to have an oral hearing. He'll want it written; he'll want it done with the least amount of intervention.

Given that we're talking about the use of something that the public maintains, which is our highways, people should have the broadest opportunity to participate, and I don't see how they do that in a written form.

Mr Ouellette: Over 400 communities currently lost their service and there were no hearings available for them. The process obviously isn't working. We feel that what we've presented here is fair and balanced.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion? Opposed? I deem the motion to fail.

The next motion is yours as well, Ms Martel.

Ms Martel: I move that subsection 22(4) of the Ontario Highway Transport Board Act, as set out in subsection 7(1) of the bill, be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) any person who advises the board, in accordance with subsection (5), that the person wishes to make a presentation in the proceeding."

Both this amendment and the one that comes directly after it refer to who is a party at a hearing. We heard some deputations being made about, how do you determine that? Is it only an operator? Should it only be an operator when, in the case of a community, for example, that community that is very reliant on bus service because it has a lot of seniors and a lot of students ends up losing that?

What we're trying to do is find a mechanism so that the issue of who is a party can be a broader one and does not only include an operator who might just be the same operator who is pulling service out of a community who would like to make a presentation and be party to that proceeding.

Mr Ouellette: For the same reasons of the Liberal motion under subsection 14(1), we'll be opposing this. That is, the reasons for limiting parties to those who are economically affected is that the user-pay board is more of a civil process than a regulatory process. There is a need to screen out frivolous representations before the board. Requiring parties to have an economic interest should screen out those frivolous appearances. Any party who wants to become involved in a board proceeding can make their case at the board that they have an economic interest. This flexibility exists in the bill as drafted. If local communities can demonstrate to the board that they have an economic interest in the outcome, then the current wording does not preclude them from being parties.

Ms Martel: I think it's going to be pretty hard for a community to demonstrate an economic interest. It's going to be hard for them to put a dollar value on a service lost to either seniors or students or other people who depend on public transportation in their community. I don't think we can expect them to try and work out that kind of valuation. The people who want to intervene also have a social interest, not just an economic interest. It's how they ensure the people in their community, depending on where they live, especially in rural and northern Ontario, still are in a position to get some service, and when that gets cut off, they can at least appeal somewhere.

These folks are not nominally affected, I can assure you, given that there are communities in my riding that have lost bus service. They are very much affected. For the life of me, you can — in the next amendment it's quite clear — allow the board to develop those criteria upon which they would determine in advance which are frivolous and vexatious interventions and not allow them. But to say that a community, for example, would have to

prove some economic interest before it could participate, I think you're clearly writing into the law now all of those reasons why communities are not going to be able to intervene, because they're not going to be able to put an economic value or a monetary value on that kind of loss.

Mr Ouellette: The former government did not take this position when there were 400 communities being lost. We've had presentations from organizations which are willing to take over and support the northern communities. So we fail to see how they feel all of a sudden that because this is the legislation that's coming forward, this is what the impact is going to be. We don't believe what you're presenting is in fact the actual case that will be presented.

Ms Martel: Whether or not we did it is not the issue. You're the government now; you've got the legislation before you. We're in the process of moving clause-by-clause. Our government never considered bus deregulation, which is what this is leading to. What we're trying to do is at least find a mechanism to allow parties in the next 18 months, some of whom, I suspect, are going to lose service, to have some say, to have some intervention.

Mr Ouellette: Under the current regulations, they have the opportunity, as the 400 communities have already lost their service, to remove their service, as was presented today, that Warren had lost services there under the current legislation.

Ms Martel: Warren just lost their service.

Mr Ouellette: That's what I just said.

Ms Martel: Because of what's happening right now.

Mr Ouellette: No, not necessarily. It's because they have the ability to do so. That's what the problem is. We are opening the doors to allow other communities or other entrepreneurs the opportunity to move into those locations, as was presented by numerous groups.

Mr Len Wood: I listened to the argument from Mr Ouellette saying why he wouldn't support this. He's using the argument that 400 other communities lost their service over a number of years so we should put a number of other communities at risk, and even a person's own grandmother or something. How do you put an economic dollar figure on a grandmother who is in a small community that has bus service now who wants to be able to go and visit her children or her grandchildren and as a result of this legislation is going to be denied that? How do you put an economic dollar value, or expect her to put an economic dollar value, on what her social life should be?

The argument doesn't make any sense to me when you say, "Four hundred other communities lost their service and now we have a right to put all the other communities at risk," and even some of the people with disabilities or seniors who have no other choice but to depend on the bus service because they either can't afford a car or they can't drive one. They're going to be isolated as a direct result of this. If we can bring amendments forward that will help to resolve some of the pain and suffering for people in those communities, I can't see why the Tory caucus wouldn't support it.

Mr Colle: It seems very restrictive. I don't see any harm in trying to ensure that perhaps a local reeve or a

mayor, or let's say the director of a medical facility, could make a presentation before the board without having to prove economic need. There may be a variety of different interests that go beyond the pure economics. This is very exclusive and it's going to mean that a lot of people affected by decisions of this board may not get the opportunity to present a case to the board. I don't see the value of that, especially when some of the impacts could be very dramatic. I support this motion.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion? Those opposed? I declare that the motion is lost.

Ms Martel?

Ms Martel: I move that section 22 of the Ontario Highway Transport Board Act —

The Chair: I thought you were going to do that one. Unfortunately, because it refers to the amendment we just defeated, it's out of order.

1850

Ms Martel: No. There were two, actually, Mr Chair. One was trying to expand it to parties so there didn't have to be an economic interest, and the second section was to set out who those parties could be and that the board itself could also order any person who was there making frivolous actions to have to pay a fine.

The Chair: Unfortunately, the one that refers to subsections 22(5) and (6) makes a reference to the (4)(c) that was just defeated.

Ms Martel: All right. Mine is also the next one?

The Chair: Yes. You have one for subsection 24(2).

Ms Martel: I move that subsection 24(2) of the Ontario Highway Transport Board Act, as set out in subsection 7(1) of the bill, be amended by adding "unless in the opinion of the board, such additional costs would be injurious to the viability of a commercial entity or would unjustly penalize participation before the board" at the end.

This sets out some guidelines or rules or perhaps a restriction on the ability of the board to charge for its services. We want to be sure that operators of all different levels of incomes still have the ability to make a presentation before the board. We heard a number of operators talk about the cost of doing so at this point, and it's not clear to me whether, with the changes the government is making right now, there's also going to be a change in fees for people appearing before the board. We want to make it clear that the board would have to take into account the ability of operators to pay so we're not moving into a system where only the big guys, big operators, can come before the board for an application or for an appeal etc.

Mr Ouellette: The bus industry clearly told us that the costs should be recovered strictly on a user-pay basis. They were strongly opposed to any across-the-board cost recovery mechanism which would have reduced fees and user costs for board proceedings. The user-pay system is in response to the government's clear direction that funding for continued economic regulation is no longer available. Waiving fees would require money that taxpayers and government simply just don't have.

Ms Martel: Can the parliamentary assistant then tell me what the fees are going to be before the board? Even

some of the larger operators raised with us their concerns about how much it costs to appear before the board now. Is that going to change?

Mr Ouellette: The presentations we had by the smaller groups who were in favour of this made no indication that there was any concern regarding the fees at all.

Ms Martel: I seem to recall a reference to \$20,000 being made by one presenter.

Mr Ouellette: Those were legal fees administered by that organization.

Ms Martel: Okay, my apologies. I assumed the reference was also to the cost of having to appear and make a whole case.

The Chair: Any further comments? Seeing none, we'll put the question. Shall the motion carry? All those in favour? Those opposed? I declare the motion to fail.

Again, Ms Martel.

Ms Martel: I move that subsection 7(2) of the bill be amended by adding "Applications and" at the beginning.

This reference goes back to the intervention made by Mr Morris, an individual who told the committee that he does numerous cases before the transport board and has over the last number of years. It's an effort to capture those applications and hearings which started before the government introduced the bill. I think he made it clear to us that the government had directed the highway transport board to stop proceeding with applications while this bill was under review, and that after threatening to sue the government those processes started again. I assume a number of applications are sitting there which may in effect have to be dropped if we don't cover for the period under which the government gave a direction to the board that was to the contrary of how it's proceeding now.

Mr Ouellette: This is specifically against an orderly transition. It would encourage applications being filed to take advantage of the old hearings system that is not user-pay. For the board to be self-funded, a narrow transition must be pursued. We need to have a break-off point.

As a point of clarification, there will be no need for applicants to reapply. Matters currently in the hearing stage will continue under the old rules, while those matters not yet having reaching the hearing stage will be handled under the new rules. The board will endeavour to deal with applications in a timely and efficient manner whether under the old or new rules.

Ms Martel: Are you still not going to find yourself in a position of two different standards being applied to people moving through the system at this time? That's what I'm trying to avoid.

Mr Ouellette: As I said, we need to have a break-off point, and that's what we're aiming for.

Ms Martel: My understanding, though, is that the board decided to continue to accept applications after being threatened to be sued. I'm just trying to get clarification on how you're going to deal with not just the hearings but the applications that may not have been acted upon yet but that were accepted into the system during the time we've been in flux dealing with this bill.

Mr Ouellette: MTO doesn't instruct the OHTB to do anything, and they did not stop taking any applications at all.

Ms Martel: But Mr Morris said something quite different to this committee. He made it very clear that the government told the Ontario Highway Transport Board to stop processing applications while this bill was being deliberated. He said that in his remarks to the committee.

Mr Ouellette: What he said was that they stopped scheduling hearings.

The Chair: I think you'll find that on page 3 under "Transition," Ms Martel.

Ms Martel: Mr Morris says: "Applications will continue to be filed every week between now and the date that the new legislation comes into force. What do we do with these filed applications?" Can the parliamentary assistant tell me what's happening with those applications that continue to be filed?

Mr Ouellette: They would fall under the new system. As I said, we don't instruct the OHTB to do anything.

Ms Martel: We have a contradiction. Mr Morris said: "The past February, the Ministry of Transport directed the board not to set down any more applications for hearing." We have a difference in opinion between the parliamentary assistant and what Mr Morris said. What I'm trying to deal with is that obviously he has put applications in and also has asked the board to schedule hearing dates, and I would like to be clear about how those are going to be handled by the board, both with respect to those that were in place before the legislation is passed and after.

Mr Ouellette: So what you're asking is for us to start mandating what the board's going to do?

Ms Martel: I want to know how they're going to handle those that were in the system before the legislation is passed, given that they obviously were put into the system under a different set of rules than are going to be in place once this legislation is passed. Are we going to be dealing with the applications and the hearings that were in place before the legislation passed under the old rules or not?

Mr Tascona: It's fairly clear on a reading of the section. It says, "Hearings commenced before this section comes into force and continued after this section comes into force" will go under the old rules. If the application does not become a hearing, obviously it won't be dealt with in the same manner. It's very clear language. I think Mr Morris's point when he was asking for the amendment was very clear. He wanted to make sure the applications would be received; obviously they would processed, but if they don't become a hearing by the time this section comes into force, they're not going to be heard under the old rules. An application has to become a hearing.

1900

Ms Martel: Except why wouldn't we allow those who did apply before to continue to operate under the rules that were in place at the time they applied?

Mr Tascona: If they don't become a hearing, I guess it's a matter of time, because there's a time period that has to be dealt with. It would be for the board to determine its own process, not for this committee to determine how it deals with its applications. If the board allows an application to become a hearing before the transition

period, it obviously will be dealt with under this section and under the old rules.

Ms Martel: That's not clear to me. That's why I'm asking the question. I do think it's the role of this committee —

Mr Tascona: It's extremely clear, Ms Martel, if you read it. If an application has not become a hearing by the time this comes into force, it is strictly an application. It has to become a hearing. The fact that the board's continuing to take applications — they may become a hearing during the time frame allowed under this act, because there is a transition period. If it's not a hearing, it's still an application and it won't be dealt with under the old rules.

Ms Martel: Then I don't see any problem with accepting the amendment I moved, which said "applications and hearings."

Mr Tascona: Because an application, if it hasn't become a hearing, would be dealt with under the old rules, and as Mr Ouellette indicated, that will clog the system. There has to be a cutoff point. If you're dealing with hearings and you finish the hearings, like under the Labour Relations Act, you finish the hearings under the old rules so everybody knows what they are. That's fair. But if you're dealing with applications and you allow — what Mr Morris is really asking for is a flood of applications to come in and basically clog the system so they won't be dealt with under the new legislation.

Ms Martel: But Mr Morris also made a point that there is an economic interest he's also trying to protect. I recall that he spoke at great length about what a delay would mean for people who had then to operate under a different set of rules. He made it very clear that there would be operators who would lose money as a consequence.

Mr Tascona: He also indicated that he didn't really care if it did change, because he would prefer not to have to go through the old process in terms of the type of preparation that was involved.

Ms Martel: Surely we have an interest, this government more than anyone else when you talk about trying to increase jobs etc, that there would be operators, as he well said in his remarks, who would be adversely affected in a negative economic way. That's also the point we want to deal with.

Mr Tascona: I don't think he did indicate that. I think he was talking professionally, as a lawyer representing the transportation lawyers' association, in terms of the procedure he would like to see in place. But he also indicated he didn't have a problem in terms of how that would be handled. The handling under the old rules was something he would like to avoid, if possible, and put his application after.

Ms Martel: He may have come to speak in that capacity. I think he was also speaking in terms of people he represents, and I think he did make it clear to this committee that there are people in the system, who he is representing now, who would suffer an adverse consequence. Whether they came individually to make that case I don't think is relevant one way or the other.

Mr Tascona: I think he can only speculate in terms of whether they would suffer an adverse consequence,

because he indicated that the preparation time under the old system would be alleviated by going under the new system. I don't really think he was suggesting that.

Ms Martel: I don't think it was the prep time as much as when they were going to get a decision. He also made it clear that by the time some of these things were handled, it might even be after the summer, where some of those operators were trying to operate this summer. I don't think it was just an issue for him of preparation time to develop a case; it was also a question of when decisions would be made so that operators could know whether they could carry on.

The Chair: To both the participants, looking inside Mr Morris's mind and who he was representing is perhaps not too germane to the point at hand. I wonder if we could restrict our comments to whether we are in favour of or opposed to the motion on the floor.

Ms Martel: Fair enough, Mr Chair.

The Chair: Any further comments? Seeing none, I'll put the question. Is it the wish of the committee that the motion carry? All those in favour? Those opposed? I declare the motion lost.

Shall section 7 carry? All those in favour? Opposed? I declare section 7 carried.

Section 8.

Ms Martel: I move that section 8 of the bill be struck out and the following substituted:

"8(1) Sections 25 and 26 of the act are repealed.

"Transition

"(2) Section 26, as it read immediately before its repeal, continues to apply to a petition that was filed before this section comes into force.

"Same

"(3) After this section comes into force,

"(a) the board shall not state a case under section 25, as it read immediately before its repeal; and

"(b) no petition may be filed under section 26, as it read immediately before its repeal."

This goes back to a point I raised earlier about what people's ability was going to be under the new bill with respect to appeals. We dealt with rehearing and also that it was the view of the government that people could use the court system to try to get some relief in cases of natural justice where they felt their rights had not been respected. This as well would reinstate a repeal to the courts on questions of law and jurisdiction as per the Statutory Powers Procedure Act, and that was a change we felt had been taken out of the act in the amendments the government was moving.

Mr Ouellette: The concerns raised over the delay would apply if appeals to Divisional Court on questions of law were preserved. A judicial review is available without retaining section 27 of the OHTBA, but applications for judicial review would not act as a stay of order reviewed, which would encourage speedy resolution rather than unwarranted delays. We would oppose this motion, this amendment.

The Chair: Any further comments? Seeing none, I'll put the question. Is it the favour of the committee that the motion carries? All those in favour? Those opposed? I declare the motion failed.

That being the only amendment to section 8, shall section 8 carry? All those in favour? Opposed? Section 8 carries.

Section 9. Mr Colle?

Mr Colle: Again just an attempt to get back to the right of appeal of board decisions, a continuation of the previous amendments dealing in that direction.

The Chair: Mr Colle, you did it to me again. You have to read the motion.

Mr Colle: I move that section 28 of the Ontario Highway Transport Board Act, as set out in section 9 of the bill, be amended by adding "Except as provided in section 16" at the beginning.

The Chair: Ms Martel's experience had lulled me into a false sense of security. Any comments?

Mr Ouellette: For the same reasons in regard to the amendment proposed on section 6, we would oppose this amendment.

The Chair: Any further comments? Seeing none, is it the favour of the committee that the motion carries? All those in favour? Those opposed? I declare the motion fails.

Now Ms Martel.

1910

Ms Martel: I move that section 28 of the Ontario Highway Transport Board Act, as set out in section 9 of the bill, be struck out and the following substituted:

"Orders of board final and binding

"28. Except as provided in sections 16 and 27, every order, direction and decision of the board is final and binding."

Mr Chair, part of those sections were dependent upon other amendments that we have already moved and that have been voted down, so it probably doesn't make much sense to rephrase the argument I made at that point.

The Chair: You're not making the motion?

Ms Martel: I am, but I know it's going to be voted down because the other sections upon which it was dependent were already voted down.

The Chair: Any further comments? Seeing none, I'll put the question. Is it the favour of the committee that this motion carry? Those in favour? Opposed? I declare the motion lost.

I'll put the question on section 9 itself. Is it the favour of the committee that section 9 carries? All those in favour? Opposed? Section 9 carries.

Seeing no amendments proposed for sections 10, 11, 12 or 13, are there any comments, questions or amendments now to those sections? Seeing none, all those in favour that sections 10, 11, 12 and 13 carry? Those opposed? Sections 10, 11, 12 and 13 carry.

Section 14.

Mr Colle: I move that the definition of "interested person" in section 1 of the Public Vehicles Act, as set out in subsection 14(1) of the bill, be amended by adding "including elected officials or people affected by decision of the board and residents in a community affected by a decision of the board" at the end.

Essentially, this is again trying to ensure that if people are affected by a board decision there is recourse to come before the board. I was trying to widen that by changing the definition of "interested person." I think this would

help ensure that there would be an opportunity to be heard if an impacting decision were made by the board.

The Chair: Any further comments? Seeing none, all those in favour of this motion? Those opposed? I declare the motion lost.

I put the question on section 14. Is it the favour of the committee that section 14 carries? All in favour? Opposed? Section 14 carries.

Are there any comments, questions or amendments to sections 15 or 16? Seeing none, all those in favour that sections 15 and 16 carry? In favour? Opposed? Sections 15 and 16 carry.

Section 17.

Ms Martel: I move that subsection 5(2) of the Public Vehicles Act, as set out in section 17 of the bill, be struck out and the following substituted:

"Discontinuance of scheduled service

"(2) The holder of an operating licence shall not discontinue any scheduled service authorized under the holder's licence except after giving 90 days written notice,

"(a) to the minister; and

"(b) to the public in the area affected, as set out in subsection (4).

"Reduction of scheduled service

"(2.1) The holder of an operating licence shall not reduce by 25% or more any scheduled service authorized under the holder's licence except after giving 30 days written notice,

"(a) to the minister; and

"(b) to the public in the area affected, as set out in subsection (4)."

What this amendment does is take what is now appearing in regulation and put into the act, which we feel would give more weight to it and more strength. Also, it provides for a new section around reducing what is a scheduled service to try and capture some of the concerns that were raised; for example, of people deciding to operate only in peak hours instead of continuing to operate a service that had been in place before. It imposes some responsibilities on a carrier who still wants to continue to provide a service on a route but wants to do that at a much reduced rate and sets out the provisions around how that would have to occur.

Mr Ouellette: The protection proposed in the regulations will do this and more. However, as I'm sure you're well aware, the regulations which set out specifics of the government's proposal to increase protection for small communities can't be disclosed in detail because it must first go through the normal regulatory process but can't proceed to finalization until the bill becomes law.

The Chair: Any further comments? Seeing none, all those in favour of the motion? Opposed? I declare the motion lost.

Ms Martel, that would make your next amendment out of order, so the next one up is a Liberal motion.

Mr Duncan: I move that section 6 of the Public Vehicles Act, as set out in section 17 of the bill, be amended by adding the following subsection:

"Safety audit required

"2.1 Upon issuing a licence under subsection (2) the board shall require that a comprehensive safety audit be completed prior to the start of operations."

It's fairly self-explanatory. We reaffirm our commitment to safety on Ontario's roads and would urge the government to do the same.

Mr Ouellette: Safety audits are provided for under the HTA applying to both private and public carriers and to other commercial vehicles. The Ministry of Transportation has committed to implementing new safety measures to augment the existing elaborate array of safety requirements pertaining to bus operators. Specifically, new market entrants will be required to demonstrate to the MTO before being allowed to operate on our roadways that their safety house is in order.

In accomplishing the intent of the proposal for amendment, the bill pertains to economic regulation and is not the proper place to specify safety rules.

Mr Len Wood: I listened to Mr Ouellette's explanation. We just had a presentation that all kinds of people right now are out there anxiously waiting to grab these buses for \$1,000 or \$2,000 and put them on the road to try to get into the business. You've got somebody who's spending \$50,000 or \$75,000 or \$100,000 on a bus, and then you get somebody else who's going to get a mechanical fitness done that's good for about 30 days, who puts this bus on the road and the wheels start flying off and breaking windshields and causing all kinds of accidents.

All we're saying is that a comprehensive safety audit be done prior to the start of operations. We're talking about putting people at risk, not only the people who are on the buses but people who are on the highways as well. I don't want to see a wheel off a bus come flying at me when I'm driving down the road because I know there are probably 30 or 40 people on the bus who are going to die at the same time as I'm going to die.

Mr Ouellette: As we stated before, they can't put them on the road without an inspection. Our commitment to safety is paramount. There would be no deviation from ensuring that our roads are safe and that the public's best interests are there.

Mr Colle: I found this really contradictory and unbelievable. What we're saying here is essentially that when a person applies for a licence, they undertake an audit prior and not six months after. I don't see how safety is enhanced by waiting six months. If they have the will and the ability to carry people safely, they'll have that in order. Why wouldn't you want to encourage that?

To say safety is paramount and then put a six-month delay on safety — it's especially paramount considering the fact that there are people who will enter into line routes or the charter business who perhaps are not fully up to safety standards. This ensures added protection for the thousands of people who will be on the buses, never mind the people on the roads and highways and the operators. It just doesn't make any sense at all to wait six months. The good, safe carriers have no problem with this. All you're doing is giving a green light to the ones who want to cut corners. Why this government would cut corners on safety — how can you rationalize this? You get the licence and you have the safety audit as you get the licence. You don't wait six months. What happens in that six-month period, with no safety audit?

Mr Ouellette: It is up to six months. The commitment with the bus blitzes currently ongoing, the safety standards we've established and the fact that they have to be inspected as well we believe will ensure that the public is safe there.

Mr Colle: In terms of the bus blitzes, you heard Mr Burley come in here yesterday and say he picked up a bus that went into his garage. How many people are doing bus blitzes in this province right now? We know how many people are doing truck blitzes. How many OPP officers have we got on the truck squad? In the whole province, what are there, a dozen? And you're laying off 1,200 people in the Ministry of Transportation. Who's going to be doing these bus blitzes?

Mr Ouellette: Actually, we've increased the inspection staff and there haven't been any layoffs in that area at all. 1920

Mr Colle: How many are on staff right now?

Mr Ouellette: The exact number? It's up to 240 now.

Mr Colle: For the whole province.

Mr Ouellette: Which is an increase of 30 or 40 individuals.

Mr Colle: And you're going to now say that's going to be adequate, considering you're going to be expanding it; there are more people entering the market as you deregulate. I just don't see the problem. If you've got that many more staff, then you shouldn't have a problem with the —

Mr Ouellette: We feel, with the number of increased inspectors, with the mandatory inspections, the commitment to bus blitzes, that it's more than adequate to ensure that our roads are safe.

Mr Colle: So the six-month —

Mr Carroll: Mr Colle, are you concerned primarily about new buses going on?

Mr Colle: Yes.

Mr Carroll: As I understand the laws of the province of Ontario, you cannot put a licence on a vehicle without a safety inspection. So I think that would cover that if you're talking about new buses going on the road.

Mr Colle: We're talking about a comprehensive safety audit —

Mr Carroll: But a safety inspection —

Mr Colle: — which goes beyond the licensing provision.

Mr Carroll: A safety inspection as required by the Ministry of Transportation should be sufficient.

Mr Colle: Yes, just like the ones people have for cars, you know. They've been buying the certificates and the whole works.

Mr Carroll: Well, that's another issue, but we currently have a system in place in the province of Ontario where a vehicle going on the road for the first time, licensed in Ontario, has to have a safety inspection. I think that's sufficient.

Mr Colle: That may be sufficient for private automobiles — in fact, in many cases it isn't — but as Mr Dubeau said, there are people who are entering the bus business with used vehicles, 20 years of age etc, because of trying to cut costs etc, which is reasonable. So I would think you've got another safeguard by saying you have to have the safety audit done before you operate. I don't see the harm in it. I don't see the downside.

Mr Carroll: It's overkill. We've got lots of regulation now to protect us in that area.

Mr Colle: "Overkill" is maybe the wrong word.

Mr Duncan: Yes, I wouldn't use that word.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion? Opposed? I declare the motion lost.

I'll put the question on section 17. All those in favour that section 17 carry? Opposed? I declare section 17 is carried.

Are there any comments, questions or amendments to sections 18 through 23? Seeing none, I'll put the question. Is it the pleasure of the committee that sections 18 through 23 carry? All in favour? Opposed? Sections 18 through 23 carry.

Section 24.

Mr Colle: I move that section 33 of the Public Vehicles Act as amended by subsection 24(1) of the bill be further amended by adding the following clause:

"(b.3) requiring applicants for licence renewals under subsection 6(3) to provide information and documents relating to the applicant's safety record as specified in the regulation."

All I'm trying to do here, Mr Chair, is ensure that all relevant documentation as it relates to safety is part of the process and is presented by the applicant so that the board can have all pertinent records before them and ensure that's the case, relating to safety.

Mr Ouellette: First of all, the licence renewals are unusual. Most operating licences are permanent. Under both the existing and the proposed systems, such renewals would normally be automatic and only exceptionally go to a hearing. The only change in the proposed system is that the minister would not be referring renewals to the board but it would be up to a competitor to present a case for conduct of a hearing on renewal. On those bases, we would be opposed to this amendment.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion? Those opposed? I declare the motion lost.

Mr Jean-Marc Lalonde (Prescott and Russell): I move that section 24 of the bill be amended by adding the following subsection:

"(1.1) Clause 33(d) of the act is amended by adding 'provided that the amount of the liability insurance coverage shall not be less than ten million dollars' at the end."

The purpose of this amendment is, at the present time for car owners, we're asking most of the time that there be coverage of \$1 million. This time when it is a bus carrying 47 people, I think we have at least 10 times the number of passengers, and if a small operator doesn't have the ability or the financial support to have insurance with \$10 million coverage, he should not be able to operate a bus, for the public safety.

Mr Ouellette: The intent is to continue to allow insurance rates to be at different levels for different sizes of buses, based on passenger capacity. The levels should not be set at unreasonably high minimum levels. What needs to be done and what we intend to do in the regulation under this bill is to bring the insurance requirements for the intercity bus industry in line with today's realities and in line with the levels of neighbouring jurisdictions.

Rest assured that the insurance levels are being raised to appropriate levels. So for those reasons we would oppose this amendment.

Ms Martel: Could I just ask then, is what Mr Lalonde proposed out of whack with other jurisdictions or in line with other jurisdictions? It seems to me if we're moving in that direction, does what he propose actually reflect what's happening in other provinces, or do we have that information?

Mr Ouellette: It is in line with what's going on in other jurisdictions, the way that we have presented it.

Mr Lalonde: It is in line with other jurisdictions?

Mr Ouellette: Yes, the way that we have presented the bill, up to the \$10 million, allowing variable rates for the mini-buses and things like that, based on passenger capacity.

Mr Len Wood: Are you saying that the \$10 million is the minimum for any operator out there and then if they have bigger buses and more — it's more than that in other jurisdictions?

Mr Ouellette: No. What we're saying is that \$10 million, being that it's "shall not be less than," could be too high in certain instances, for small capacities and things like that.

Mr Colle: In terms of the liability threshold here, again I think that the purpose here is to ensure that we don't have the situation which occurs today where some bus operators have about the same level of liability as ordinary motorists do. What it's really doing is ensuring that people have a substantial track record in businesses, that you don't have people entering the market who have no business being there. It's all part of the risk to the public and I think also unfair competition for people who have safe vehicles and carry these costs. So there are two aspects to it.

A \$10-million level for a passenger vehicle — if you want to have a special regulation that also deals with minivans or other vehicles, you can do that afterwards by regulation, but a \$10-million limit for regular intercity buses is quite reasonable. I'm not sure what the problem is in terms of sending a strong message to people that if you want to enter this field, you have to be willing to secure sufficient insurance. I think it really makes it fair for everybody in the business and at the same time ensures that the public is not going to be at risk in terms of insurance liability.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion? Opposed? I declare the motion lost, which leads us to Ms Martel.

Ms Martel: I move that clause 33(o) of the Public Vehicles Act, as set out in subsection 24(2) of the bill, be amended by striking out "the amount of notice and" in the sixth and seventh lines.

The purpose here was to move some provisions that currently appear in regulation into the act itself to give it what we thought would be greater strength in law.

Mr Ouellette: We feel that the regulations are a better place to set out the rules governing notice of discontinuance and reduction so that it can be more flexible to changing requirements if changes are necessary in the public interest. So for those reasons we will be opposing the motion.

1930

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion? Opposed? I declare the motion lost.

Mr Colle: I move that section 33 of the Public Vehicles Act, as amended by section 24 of the bill, be further amended by adding the following clause:

"(p) For the purpose of eliminating undue obstacles in the transportation network governed by this act to the mobility of disabled persons, including regulations respecting:

"(i) the design, construction or modification of, and the posting of signs on, in or around, means of transportation and related facilities and premises, including equipment used in them;

"(ii) the training of personnel employed at or in those facilities for premises or by carriers;

"(iii) tariffs, rates, fares, charges and terms and conditions of carriage applicable in respect of the transportation of disabled persons or services incidental thereto;

"(iv) the communication of information to disabled persons;

"(v) exemptions for specified persons, means of transportation, services or related facilities in premises from the application of regulations made under subclause (i), (ii), (iii) or (iv)."

Just again, in support of the deputation we had here, it's very clear that the provincial government has the authority to enact regulations as it relates to intercity buses and their accessibility for public transportation.

We know that the Premier is clearly on record that he would proceed with this and made that commitment, so we're just supporting the Premier's initiative on ensuring that people across Ontario have access to disabled transportation.

I think it's an essential basic right that people have mobility rights across the province of Ontario, especially when many small communities are serviced by the intercity bus industry and they have the right to intercity travel as much as anybody else.

This amendment ensures that the act enables fair, equitable and available mobility for all Ontarians and doesn't exclude any Ontarians who, because of a disability that may be beyond their control, don't have the same access to public transportation.

I think the Premier is right in supporting this proposal of accessibility in Ontario on intercity buses, and we support the Premier's initiative. I'm sure that he would support this amendment, as he has stated so, because I'm sure he doesn't want to resign.

Mr Len Wood: In support of this amendment that's brought forward by my good colleague Mr Colle, it's quite clear in the presentation that was made from the Transportation Action Now group that they were given a written response. Prior to his election as Premier, Mike Harris stated in a response to a written question from our organization that a Harris government would work to ensure that all new intercity buses purchased in Ontario are fully accessible.

He also pointed out on May 10 that he stands by his election promises and will resign if he fails to honour them. He promised persons with disabilities that all new

intercity buses purchased in Ontario would be fully accessible.

Either Bill 39 will have to be amended with this section that's brought forward to reflect his campaign promise, or he should be prepared to do the honourable thing and resign.

I point out that in the conclusion by the presenters Transportation Action Now, they say:

"At present there is no mechanism for implementing the government's campaign promise on accessible intercity buses. Transportation Action Now respectfully requests that the government follow the lead of the federal government and establish a mechanism for ensuring not only safety but also accessibility."

I would go back to point out that it was a promise that was made by Mike Harris during the election campaign, and he repeated it again on May 10, that "he stands by his election promises and will resign if he fails to honour them. He promised persons with disabilities that all new intercity buses purchased in Ontario would be fully accessible."

I can't see any reason why anybody in this room would not be fully supportive of a position that Mike Harris, who is the Premier now, has taken during the election campaign and since the election campaign. We saw Sheila Copps make a promise, and she kept her promise. She's fighting it out now in a by-election in Hamilton. She said she would resign if she could not scrap the GST. Mike Harris has said that if he doesn't keep his promise to make buses fully accessible in Ontario, he will resign.

I wouldn't want to see the six or seven Tory members, people over here having to go up in the next couple of weeks and start campaigning for Mike Harris to get re-elected in a by-election in the riding of Nipissing. Of course, I would be up there campaigning against him. I would look for support from all three political parties and make sure that the Premier of Ontario, Mike Harris, does not have to resign over a broken promise if you vote against this amendment.

Mr DeFaria: This is an amendment that I have a great deal of sympathy for. The only problem I have, and maybe Ms Martel will be able to assist me, is that I assume this provision is not presently law in Ontario. There is no such provision presently in our laws?

Ms Martel: I'm going by what the group said to us, which Mr Colle repeated, that there was a provision around municipally operated transit services.

Mr DeFaria: But not intercity.

Ms Martel: Not for transit on line. I would assume charter is included in that as well.

Mr DeFaria: The reason I'm asking that is because both the NDP and the Liberal governments had been in power for so long in the province and had not chosen to bring it forward. Maybe the reason it had not been brought forward is because it would put Ontario operators in a disadvantaged position in comparison to other interprovincial — like Quebec — operators, because interprovincial are also intercity. Some of the intercity go from one province to the other, and provisions such as these would be very difficult to enforce when buses come from Quebec, for example.

Mr Len Wood: We're just saying, don't discriminate against the disabled.

Mr DeFaria: Right, but how would you be able to enforce the training of personnel —

Mr Colle: The Premier —

The Chair: Order. We've got a speaking order.

Mr DeFaria: — and tariffs and rates that are being imposed out of Quebec on people travelling from —

Mr Len Wood: We're simply saying, don't discriminate in Ontario against disabled people. That's all we're saying.

Mr DeFaria: You have specific provisions here. You have training of personnel, tariffs, rates, communication of information, signs. If an operator is coming from Montreal to Toronto, you would have difficulty in enforcing some of these provisions, and maybe that's why your governments didn't choose to legislate it.

1940

Mrs Barbara Fisher (Bruce): I would like to be on record as supportive of the issue that has been brought before us today. In fairness, we haven't had representation from other stakeholders who would have, I'm sure, something to say about this. I think we should be listening to all parties. This is a 10-year-old problem. I don't think somebody should be introducing it in this way, as a 15-minute, last-minute move. There is going to be an opportunity when further legislation with regard to deregulation is brought forward, and I think that would be the proper time to address it. I agree, and I am compassionate to the issue, but I think it should be handled in a way that is fair not only to the group that made representation requesting consideration of this point today but to those others involved who will have to make changes because of it. I hope we could consider it at the time we bring forward additional legislation. I don't think there's anybody sitting here at this table today — I haven't heard so yet, not one body — who said they didn't agree with the issue being dealt with. But I don't think 10 minutes — it wasn't even 10 minutes — the last thing that happened before we closed, before going into clause-by-clause, is the way to handle this. It's not a responsible way to make a decision on such a major issue.

Ms Martel: In response to both Ms Fisher and Mr DeFaria, someone on that side better explain to me why these weren't all concerns that Mike Harris had when he made the commitment in the first place during the election campaign to get the vote of the disabled. Let's face it, folks, you can't have a double standard, you can't be on both sides of this issue, and that's what you're trying to do right now.

Your leader, the man who is now Premier, had no trouble when he was out on the campaign trail, trying to get votes from people in the disabled community, saying this wasn't going to be a problem. He didn't raise it before the disabled community or send a letter back to their organization which said, "Jeez, we'd like to accommodate you, but we're really worried about having the opportunity to talk to other people, ie, the operators, to see if they can enforce it." He didn't say to them, "We'd like to have an opportunity to see if some of the provisions can be enforced and to determine if that's why the NDP didn't move on it."

No, I'm sorry; Mr Harris, during an election campaign, to try to get votes from the disabled, said, "A Harris government would work to ensure that all new intercity buses purchased in Ontario are fully accessible," period. There you have it. That's what the man said, and if it was good enough before the election to try to get votes from the disabled community, why isn't it good enough now?

Mrs Fisher: It still is.

Ms Martel: If it still is, then let's move the motion now. Obviously, Mr Harris wasn't concerned about all these things when he made the commitment. Mr Harris, in making the commitment, wanted to be sure that people who are disabled have equal access on intercity buses. That must be what he agreed to when he sent this letter back. He had to know what that meant. He had lots of research staff who could have looked into this. Of course he knew what it meant. I suspect that what he wanted to ensure was that there was no discrimination against disabled people in terms of having accessibility to buses in this province. We agree with that. That's why we're moving the amendment now. I really think the government members ought to be supporting this motion. It was sure good enough for him then in the election campaign; it should be good enough now.

Mr Carroll: I want to support what Ms Fisher said, that we agree it is an issue that does need to be dealt with.

It's interesting that the two parties opposite came forward with many amendments, some of which were on very small issues, yet on this particular big issue —

Mr Len Wood: Don't discriminate against the disabled in Ontario; that's all I'm saying.

Mr Carroll: — which they feel is so important now, they did not see fit to come forward with an amendment until the last second, scribbled out on a piece of paper, as a result of a presentation that was made. I think they're reacting to —

Mr Colle: On a point of privilege, Mr Chair: It wasn't our fault that the deputation was made this afternoon at this hour. We did not have an opportunity to set the timetable for deputations; It wasn't our doing. If we had had an opportunity of a couple of days — I think that is very unfair.

Mr Carroll: If the issue is what Mr Harris, the Premier, said during the election campaign, they should have known about that well before today and should have been making the appropriate amendment prior to now. I think it's opportunism on their part. It is something we should be dealing with in the future.

The Chair: Are there any more comments?

Ms Martel: They made all kinds of promises.

The Chair: Ms Martel, please, order. Could we stay on the topic at hand.

Mr Len Wood: With all due respect, the arguments that were given by Ms Fisher, Mr Carroll and Mr DeFaria don't make any sense. It's a simple matter of fact that these people made a presentation based on what Mike Harris told them during the election campaign. He put it in writing. He agreed that he would stop the discrimination against those people who were going to be riding the buses on the highways throughout Ontario. Now all of a sudden we hear the Tory members saying: "We're going

to vote against this because we don't think Mike Harris meant that during the election campaign. We don't think we should help him to keep his promises, so we're going to vote against all in the disabled community who want to travel by bus in Ontario."

I'm quite prepared to go out in the by-election and help to make sure Mike Harris is known in his riding for the promises he made, and walking away from them, if he decides that he's going to keep his promise and resign, because this is what it's all about. It's an amendment that was brought forward based on a suggestion that was presented to us by the Transportation Action Now group. It was presented at the last part of the day.

There are all of the arguments asking, "Why didn't the Liberal or the NDP government do it in the 10 years prior to it?" I don't think you would see either the Liberals or the NDP vote against an amendment that would stop discrimination in the province of Ontario against the disabled and those people, aged or whatever, who want to travel the bus system in Ontario. You have the opportunity now to rectify a bad situation. Don't blame the NDP or the Liberals for not doing it. You have the opportunity now to rectify it based on what Mike Harris said — "I'll keep my promises or I will resign." He made a promise that the disabled community would not be discriminated against as far as the public busing system on the highways of Ontario was concerned.

I don't accept the argument that it might be more expensive if there's a bus from Manitoba or Quebec that comes in and wants to discriminate against them. They should be told very clearly, "Look, if you're going to pick up passengers in Ontario, you're going to pick up the disabled people as well as the healthy people or you don't come into the province." It's very simple. Stand up and support what your Premier has said. Don't vote against him and force him into a by-election.

Mr Ouellette: When we started this, we had a discussion that this bill had a very narrow focus in that it was designed to establish an interim regime prior to deregulation, that the intent was to have further legislation coming out. The MTO could not contemplate in the short term the amendment that has been brought forward. We have not consulted with the industry on this. Although, as I stated earlier, we intend to have further legislation come out, this has given the opportunity to review the industry, and so the industry also has the ability to review how it will impact them. At that time, we can expect to see some changes.

For those reasons, as we stated, we're looking at this legislation. That's why it's not in as of April 1, as was stated in one of the earlier presentations, so that all implications can be dealt with. For those reasons, I will be opposing this amendment.

Mrs Fisher: I would like to add one more thing to further support the reason why we should do this in a mature manner. In the presentation that was made to us today, there was a supplementary submission on behalf of the group that came before us. I would like to quote one part of it and why we need to be discussing that, not only with other stakeholders, by the way, but with the federal government. I want to quote from the report that was given to us today why we should be handling it in a proper way. It's section 6, page 6 of the supplementary

submission on behalf of Transportation Action Now to our committee today.

"What followed was a 12-year period of waiting for provincial action. In 1991, the federal Minister of Transport asked the National Transportation Agency of Canada to carry out an inquiry into the accessibility of extra-provincial motor coach services in Canada. The agency reported in 1993 in *The Road to Accessibility: An Inquiry into Canadian Motor Coach Services*. The report recommended that a national standard of accessibility be established and that provinces delegate to the federal government authority over buses under their jurisdiction so that the agency might have a consolidated enforcement authority."

I happen to support that type of intent and I think we should be doing it in cooperation with the federal government. We can show leadership in this as a province that understands the need to take care of a problem that's been long outstanding, and I would urge us to do that. But I don't think by handling a motion today without that kind of consultation that's required to have that partnership between the two levels of authority — governments — we'd be acting in a responsible manner. That's why I will be voting against the motion today, but would be very pleased to look into this further in any capacity that I'm asked to on behalf of the government.

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Mr Len Wood: I'm still puzzled. One year ago Mike Harris had no problem standing up at every microphone there was around and saying, "I promise this; I promise that." He promised that he would take action that would help out the disabled community in the province of Ontario; he promised it in writing. Now, a year later, you're saying, "We've got to take some time to look at this to see if we can pass the buck off on to the federal government." That's not acceptable. It's completely not acceptable that you would, a year later, after Mike Harris making those promises, say, "Can we not blame the Liberal government in Ottawa now for not helping out the disabled community in Ontario?"

You have the opportunity now to support Mike Harris in the promise that he made, "If I don't do something about the disabled people in this province as far as busing is concerned, I will resign." He said that; he put it in writing. Don't try to tell me that you have to wait for more time to study to see if you can find a way of passing off the buck on to the Ottawa government. That's completely not acceptable at all.

Mr Maves: On Monday this committee heard from an intercity bus operator who had tried to implement a fully accessible bus service in the Niagara area, yet when he went to the transport board for a licence he was denied, and after he had spent \$200,000 on his application. After full deregulation, this gentleman would have been able to provide such accessible service for the disabled. In a sense, with this bill, which is hopefully leading us towards greater deregulation, this gentleman would have been able to have brought on line his business of accessible bus service. He would have to fulfil certain safety requirements, but under full deregulation that accessible service would be there. I think that's significant; it's a way to fulfil such promises. By deregulating, people can more easily bring on these services. That's an example

that was heard right in front of this committee on Monday. In the current system, that ability is not there, so this bill is speaking to this issue.

Furthermore, Mr Colle said, "In fairness, we drafted this at the last minute because we just heard of it at the last minute." Clearly, in fairness then, to consider a motion like this you have to have an opportunity to see if the motion, as worded, is proper with ministry lawyers, and there are so many other ramifications that we must have time to consider. Let's look at this logically and quit the grandstanding. Obviously, we should not accept this motion at this point in time, having not had proper time to consider all of the ramifications and the legalities of it. I'll vote against that motion.

Ms Martel: There's no reason, before or after bus deregulation, that any operator should be restricted or feel that he or she can't make anything fully accessible. There's nothing in law or under the current structure that you're now trying to change which forbids or somehow restricts an operator from becoming fully accessible to people who are disabled. That's a ridiculous argument.

Secondly, folks, the Premier made a commitment well over 10 months ago, and it seems to me, since there are enough whiz kids working for this government, that someone, having looked at the Premier's promises, would have been busily working away figuring out exactly what he meant when he said what he said and how that was going to be implemented. To try and say now that we're sitting here at the last minute and dealing with something that no one has any idea about is also ridiculous.

I'm sorry, your Premier made the commitment. Surely when he made the commitment he understood what the consequences would be and what was going to be involved. Why would he make a commitment without having a clear understanding of that? To try and say, "We're going to vote against it because right now, at this hour, we don't know what all the implications are, even though our Premier made the commitment over 10 months ago, and to fulfil his promises we should be looking at what he said and how those things can be implemented," is just not an acceptable argument, not only to the members of this committee, but to the disabled community.

Finally, with respect to waiting for the feds and looking for a national standard, my goodness, if Ontario can't and doesn't want to lead in this regard, then there's something wrong. To say that we're going to wait and we're going to see what everyone else does and we'll spend two or three years fooling around studying it — look, the fact of the matter is it was a Conservative government in 1987, folks, that put this into place, and in 1993 we had an agreement. There's no reason now why we shouldn't be carrying through on that.

The legislation is open now. It's sitting in the hands of your government. Your Premier, when he was out on the campaign trail, thought it was good enough to campaign on, thought it was good enough to make a commitment on with respect to the disabled community. We're asking you today to live up to that commitment on behalf of those folks, and I think you should want to do that.

Mr Len Wood: It frustrates me a little bit to hear some of the arguments out there, because we hear comments that somebody has to spend \$200,000 to get

permission to take disabled people on the bus. We have buses from the airport, coming into town, going all over the over place.

All we're saying in simple terms is that you have an opportunity now to show the disabled community or the aging community that they are part of society, that if they want to ride a bus on Highway 11, Highway 16 or 69 or whatever the highways are throughout this province, Mike Harris is going to keep his promise and see that they will not be discriminated against any more; they will be allowed to go on these buses. There might be the odd time that the bus with 47 or 50 passengers is going to be able to take only two people in wheelchairs or whatever, but that's understandable. Even the people who are sitting in wheelchairs understand that there's only room for so many of them on a specific bus.

Don't let your Premier down and say we're going to leave these people sitting on the side of the road and they're going to have to spend money out of their pocket to get taxis or whatever, when we have buses going right by there and we have an opportunity now to include this in Bill 39, which is part of the complete deregulation of the bus industry somewhere down the road. It can send a message out loud and clear that the disabled community will be looked after in this province, that Mike Harris wants to do it.

Why do we have the arguments from so many Conservatives that they're not going to do it, they're going to vote against it? I haven't heard a single good reason yet why they would vote against it, knowing that 10 or 11 months ago Mike Harris made that promise and he put it in writing to the group Transportation Action Now. It doesn't make any sense that we would still sit here arguing about whether you should support Mike Harris in his bid or force him into a by-election. I'm sure that when the media get wind of this they're going to be hounding him all over the place.

I was in North Bay last Thursday. They don't think very much of him in his own town. Now if you get this coming out, another broken promise, allowing the continued discrimination against the disabled community by not agreeing to an amendment of this kind, it doesn't make any sense to me. I can't understand it.

Mr DeFaria: Just to clear the record, I think the arguments made on the other side minimize the commitment we made. The commitment we made says, "A Harris government would work to ensure that all new intercity buses purchased within Ontario are fully accessible." Can you tell me, Mr Chair, what that has to do with the posting of signs, which this amendment deals with? It has nothing to do with the commitment.

The commitment is buses purchased within Ontario, that we'd work to ensure that those buses are fully accessible; nothing to do with the posting of signs and other things that this amendment deals with. By putting the two side by side, you're minimizing our commitment made to the disabled community in Ontario.

Mr Colle: Mr Chair, that is an incredible comment. In the disabled community, it's critical to have proper signage. I don't know if you've ever seen signage saying there are ramps available, there is access available. Signage is part and parcel of accessible transportation.

They have the right to know where the access points are. You can't have accessible service without proper direction and the signs are a critical component and a minor component.

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The final thing I'll say is that the way this process works is that we had deputations come in today until 5:30; we have scheduled it up to 6 o'clock. It was possible that other deputants would have had some meaningful amendments to make. I think the Chair was reasonable in accepting the fact that these people had legitimate points to make, and there were even a couple of other suggested amendments made by a couple of other deputants that I thought would have been worthwhile to look at.

It wasn't by our design that this came up at the last minute. I think either you say, "Don't bother coming and making deputations," the day that you go to clause-by-clause or you enable them to. We obviously try to accommodate people who make meaningful suggestions. Those people who came today, the last day, have the right to suggest amendments and we're giving them that opportunity. It's not a matter of anything more than that this amendment was brought forward and it had some relevance to our debate here, and I think it's part of the debate. The timing of it is none of our doing or none of the deputants' doing. This is the way the process works here in terms of the time constraints. We don't want to start restricting people.

Mr Duncan: Just to that, we advocated a subcommittee for a longer period of time. Your government, as has been consistent, has insisted on just giving you your marching orders and sending you in here. What has happened is we're here to listen to these delegations, and you know what? You have a chance to right a wrong; you have a chance right now to do exactly what you said you would do. To suggest somehow that we ought to just come in here, listen to deputants, do our clause-by-clause and walk away, to me just undermines the principle of why we're here.

If you want to have clause-by-clause on this section next week, we'll be happy to. We advocated for a longer period of time. We advocated that we travel the province, because we are interested in hearing what people have to say and we're prepared to respond to them. I think you have an opportunity here to adopt a commonsense amendment to the bill which recognizes what municipal authorities and other authorities have done and to do it in a timely fashion. I think you are passing up an opportunity to put the interests of those who require accessibility ahead of whoever else you're representing here today.

Mrs Fisher: I would like to say just a couple of things and then I hope that we will stop reiterating points, but I would like to introduce a new point here.

What some of the members on this side have indicated, those who have spoken so far, and I haven't yet heard any murmurs that there is any dissension with regard to that issue, is that we are more than willing to look at it, and I don't think we should leave the room tonight being portrayed that we're not going to deal with it. We will deal with it. But it's rather ironical that somebody who

sits on the other side and continues to say, "You ram it through, you ram it through, you ram it through," all of a sudden wants it rammed through.

There is an ability to deal with this in the near future in a responsible way. I can assure you that this will be raised through our committee and our caucus representatives to this committee with the responsible minister, and I'm sure that some action will be undertaken to deal with the problem.

I can only say one thing. Being a new member here and looking over the history of the presentation that was made today, anybody who is left in the room who was part of that delegation, and there is at least one party still here — I don't think that person would want to leave the room thinking this government is not looking to take action on this. Some of the opinions I'm hearing on the other side suggest that might be the case. I think we'll live up to a commitment to deal with the issue and take it to committee and take it back to our minister and express the concerns that were raised today. We have an opportunity to deal with it, we will deal with it, but I think we ought to do it in a responsible manner.

Mr Duncan: I certainly concur and I move a one-week deferral of consideration of this amendment.

The Chair: The motion is out of order. There's a motion on the floor right now.

Mr Len Wood: On the issue, there's nothing that's happened here on the spur of the moment, there's nothing that is being rammed down anybody's throat. We're talking about a lot of thought that went into building up Mike Harris to make that promise 10 months ago. I'm sure he thought about that in all the Common Sense Revolution booklets that he was making. There were a number of editions of them. Then he finally came to the point that it doesn't make any sense to allow the bus industry to drive right by disabled people in this province. "I will change that," or "If I don't change it, I will resign."

There's nothing that's happened here on the spur of the moment. A lot of thought has gone into the decision-making leading up to making sure that the disabled community is not being discriminated against in this province, and I don't accept the argument that somebody is trying to ram something down somebody's throat. Mike Harris spoke it. He put it in writing 10 months ago. He had probably thought about it for a couple of years before he did it, so you're talking about a long process here.

Now all of a sudden we have the Tory caucus sitting on the other side saying: "Something happened here on the spur of the moment. The disabled community came in and made a presentation under Transportation Action Now. They want an amendment and the Liberals and the NDP are supporting it. We can't support it, even though we campaigned on it, we talked about it during the election campaign. Mike Harris made a promise on it, but we're not going to support the disabled community. We're going to push them out through the door and we'll tell them, 'Somewhere down the road, trust us.'"

The welfare people, the women, the children are still saying, "We trusted Mike Harris; we trusted them that they wouldn't make us starve in this province."

There are a lot of things that you have been able to do over the last year, and now it's very simple that we're saying, stand up and be counted. I made comments in the Legislature. I get concerned when people act like what happened in Jonestown. They all say: "We've got to follow the leader. Exactly what the leader says, we're going to follow." Now you have an opportunity to follow what your leader says — and you won't die as a result of it. Support him, support us. He's saying the same thing as we're saying. We're saying, "Support it; don't leave the disabled community dangling out there that somewhere down the road we'll take a look at it." It doesn't make any sense at all.

The Chair: Any further comments? Seeing none, I'll put the question.

All those in favour of the motion? Opposed?

Mr Len Wood: Recorded vote.

Mr Duncan: Recorded vote.

The Chair: The vote has been called. Sorry, it takes unanimous consent. I'll ask the question. Is there unanimous consent for a recorded vote? I'm supposed to hear yes or no.

Mr Duncan: What are you afraid of?

Interjection.

The Chair: Once I've put the question, Mr Wood. The clerk is telling me yes. Once the vote has started — your hands were already up.

All those opposed? I declare the motion failed.

Mr Duncan: I move deferral of clause-by-clause consideration until next week for the purpose of reconsidering this matter.

The Chair: That motion is not, strictly speaking, in order, but with unanimous consent we could defer further debate on that section. Is there unanimous consent to defer? No. Sorry.

I'll therefore put the question on section 24 itself.

Mr Duncan: I'd like a recorded vote on this as well.

The Chair: Very good.

Ayes

Boushy, Carroll, DeFaria, Fisher, Maves, Ouellette, Tascona.

Nays

Colle, Duncan, Lalonde, Martel, Len Wood.

The Chair: I declare that section carried.

Seeing no amendments, I ask if there are any comments, questions or suggestions for sections 25 through 40. Seeing none, I'll put the question.

All those in favour that sections 25 through 40 carry? Opposed? Sections 25 through 40 carry.

Shall section 41, the short title of the bill, carry? All those in favour? Those opposed? Section 41 is carried.

Shall the long title of the bill carry? All those in favour? Contrary? The long title of the bill carries.

Shall Bill 39 carry? Those opposed? Bill 39 carries.

Shall Bill 39 be reported to the House? All those in favour? Contrary? Bill 39 shall be reported back to the House.

Thank you, committee members. This committee stands adjourned.

The committee adjourned at 2011.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Président: Gilchrist, Steve (Scarborough East / -Est PC)

Vice-Chair / Vice-Président: Fisher, Barbara (Bruce PC)

Baird, John R. (Nepean PC)

*Carroll, Jack (Chatham-Kent PC)

Christopherson, David (Hamilton Centre / -Centre ND)

Chudleigh, Ted (Halton North / -Nord PC)

Churley, Marilyn (Riverdale ND)

*Duncan, Dwight (Windsor-Walkerville L)

*Fisher, Barbara (Bruce PC)

*Gilchrist, Steve (Scarborough East / -Est PC)

Hoy, Pat (Essex-Kent L)

*Lalonde, Jean-Marc (Prescott and Russell / Prescott et Russell L)

*Maves, Bart (Niagara Falls PC)

Murdoch, Bill (Grey-Owen Sound PC)

*Ouellette, Jerry J. (Oshawa PC)

*Tascona, Joseph (Simcoe Centre / -Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Boushy, Dave (Sarnia PC) for Mr Murdoch

Colle, Mike (Oakwood L) for Mr Hoy

DeFaria, Carl (Mississauga East / -Est PC) for Mr Baird

Martel, Shelley (Sudbury East / -Est ND) for Mr Christopherson

Wood, Len (Cochrane North / -Nord ND) for Ms Churley

Also taking part /Autres participants et participantes:

Murray Forbes, counsel, legal services branch, Ministry of Transportation

Clerk / Greffier: Douglas Arnott

Staff / Personnel:

Susan Klein, legislative counsel

Ray McLellan, research officer, Legislative Research Service

CONTENTS

Wednesday 15 May 1996

Ontario Highway Transport Board and Public Vehicles Amendment Act, 1996, Bill 39, <i>Mr Palladini</i> / Loi de 1996 modifiant la Loi sur la Commission des transports routiers de l'Ontario et la Loi sur les véhicules de transport en commun, projet de loi 39, <i>M Palladini</i>	R-811
Walsh Transportation Ltd	R-811
Rick Walsh, president	
Major Intercity Carriers of Ontario	R-814
Don Haire, coordinator	
Amalgamated Transit Union, Local 1415	R-817
Bill Noddle, president	
Ontario School Bus Association	R-819
Fred Thompson, vice-president	
Rick Donaldson, executive director	
Penetang-Midland Coach Lines Ltd	R-822
Brian Dubeau	
United Transportation Union	R-825
Glenn King, secretary, Ontario legislative board	
Guilles Tessier, alternate legislative representative, Local 1161	
Transportation Action Now	R-828
Stephen Little, co-chair	
David Baker, legal counsel	
Lew Blancher	



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Première session, 36^e législature

Official Report of Debates (Hansard)

Monday 19 August 1996

Journal des débats (Hansard)

Lundi 19 août 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



Chair: Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 19 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 19 août 1996

*The committee met at 0906 in committee room 1.*EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): Good morning. This is the first day of hearings on Bill 49. The first order of business this morning will be the report of the subcommittee on committee business. I believe every member has a copy in front of them. I'd ask someone to move the adoption of the subcommittee report. Mr O'Toole. Any comments? Additions? Seeing none, I'll put the question. All those in favour of the subcommittee report being adopted? Contrary? That motion carries.

We'll start the proceedings this morning with a 20-minute statement by the minister and then 20-minute responses by each of the two opposition parties. Good morning, minister.

MINISTER OF LABOUR

Hon Elizabeth Witmer (Minister of Labour): Thank you very much, Mr Chair, members of the committee. I'm pleased to be here this morning at the opening of public hearings into Bill 49. Our goal is legislation that makes the act's administration and enforcement more efficient and cost-effective, makes it more relevant —

The Chair: Excuse me. I must direct all those people in the room that the same rules about using props apply here that apply in the House. I'm going to ask you once only to please take your posters down and refrain from using them again or leave the room. Mr Clerk, would you take the appropriate steps to have those people removed from the room.

Sorry for the interruption, Minister. Please proceed.

Hon Mrs Witmer: As I indicated, our goal is legislation that's going to make the act's administration and enforcement more efficient and cost-effective. It's going to make it more relevant to today's workplace, it's going to encourage self-reliance and it's actually going to focus the ministry's resources on Ontario's most vulnerable workers.

Bill 49 will be followed by a complete review of the Employment Standards Act this fall in order to address the dramatic changes we are seeing in the nature of the labour market and the workplace. It is critical that our employment regulations be responsive to these changes as

we endeavour to provide appropriate protection for employees.

Some of the key labour market changes that we are seeing are:

The dramatic growth of computer-based technological change.

The decline in the share of employment accounted for by the traditional manufacturing industries, accompanied by the growth of the service sector.

Changes in the distribution of the patterns of work time.

Non-standard employment arrangements of all types are becoming more prevalent, and about one third of all workers are now in these jobs. This includes home workers, part-time workers and other temporary employment relationships.

We are seeing changes in the composition of the labour force, as we see the growth in the percentage of families with both parents working outside of the home and an aging workforce.

We are also seeing the globalization of competition, resulting in the need for business to ensure that productivity in the workplace is maximized.

We must ensure that our act is relevant to the changing workplace and meets the needs of employers and employees. We also need to make sure that we administer the act efficiently and effectively to provide the best value for the taxpayers.

What I envision emerging from our work to reform the act is an Ontario with workplaces where the rights and responsibilities of employees and employers are balanced, fair and easily understood by both parties, and support the growth of the economy upon which, ultimately, the wellbeing of the worker depends.

To achieve these outcomes, we need to ensure that employees have the protection they need while balancing their rights and responsibilities; encourage self-reliance by the workplace parties; enhance flexibility; help the workplace parties comply with the law by making it easier to understand and apply; and ensure effective enforcement.

We also need to eliminate unnecessary regulation. The Carr-Gordon report to the government's Red Tape Review Commission recently concluded that many employers, especially those that are small and medium businesses, see Ministry of Labour laws and regulations as an obstacle to growth and job creation. This reflects the fact that Ontario's approach to workplace regulation has not kept pace with the massive changes in the labour market that we have seen in the past 15 to 20 years.

In the case of the Employment Standards Act, as amendments have continued to be added, the act has

become increasingly complex and very confusing for employers and employees. Patching up here and there, as previous governments have done since 1974, will no longer suffice. We need a full-scale, comprehensive debate about what type of Employment Standards Act will best serve the people of this province into the next century. Who should be covered and what standards should we have are two of the questions we need to answer. So we are going forward. Bill 49 is the first step, and then the full review and the release of a discussion paper in the fall.

Let us take a look at Bill 49. Bill 49 is primarily about improving the administration and enforcement of the act. It will also help us focus our resources where they are most needed; that is, to help the most vulnerable. The changes will result in fewer complaints, reduced duplication and increased flexibility in the resolution of complaints, and will promote self-reliance for the workplace parties to resolve their disputes. I believe that when people resolve their own differences and find solutions, they are more inclined to make the outcome work, and people will have a chance to do that.

One of the key elements of Bill 49 is our proposal to replace the current two-year limitation period for filing a claim with a six-month limitation. This new period is in line with other provinces such as Newfoundland, Nova Scotia, Manitoba, Alberta and British Columbia. In fact, almost 90% of claims today are already filed within six months. Change is necessary, because it is difficult to investigate claims that are brought forward long after the alleged violations occurred. Evidence is more difficult to obtain, witnesses become more unreliable and the effort expended to resolve these cases is out of proportion to the benefits received by the claimants in the end. Filing a claim within six months will result in speedier resolution of complaints and allow employees to receive the money owed to them more quickly. It will also improve compliance, since in many situations employers do not know that they are violating the act.

Bill 49 will also place a \$10,000 ceiling on the value of orders that can be issued by an employment standards officer on behalf of an individual claimant. Employees who wish to make a claim for more than \$10,000 will now be required to do so through the courts. However, this provision would not prevent them from pursuing claims for more than \$10,000 through the employment standards branch, although the order would only be issued for up to \$10,000. The bill does make an exception for large claims that arise out of violations where reinstatement is a remedy, since the courts will not usually provide for reinstatement.

Employees can be reinstated for violations of such standards as pregnancy and parental leave or the right to refuse Sunday work in the retail industry. Since the courts are reluctant to grant reinstatement, I believe it is important to allow such cases to continue to be pursued through the employment standards program.

I would remind committee members that until 1991 there was a \$4,000 cap on claims, excluding termination and severance pay. I also think you need to know that the percentage of individual claims that exceed \$10,000 is about 4% and usually involves individuals in executive

positions. Unfortunately, removal of the limit on claim in 1991 had the effect of encouraging employees with large claims to file a complaint with the ministry as well as pursuing civil action. This is an unnecessary duplication of effort and waste of taxpayer money. Moreover, the 4% of the individual cases above the \$10,000 limit have taken up a disproportionate amount of the ministry resources because they are often very complex. We believe our resources should be devoted to helping those with smaller claims where an alternative remedy is not practical.

Another key feature of the bill is that employees will have to decide at the outset whether they wish to file an employment standards claim or take the matter to court. There will be a two-week grace period for all applicants to obtain legal advice and consider their options. In the past an employee may have tried to address a claim through both the ministry and the courts at the same time or in consecutive fashion. This meant that the taxpayers paid twice for these costly processes. This is consistent with other provinces where employees must also choose whether to pursue claims through the government process or the courts. Although the legislation enables us to set a minimum claim amount, I want to stress that we have no plans to do so.

Another key change involves giving our employment standards officers the power to mediate and resolve complaints upon the mutual agreement of the parties before conducting a time-consuming full-scale investigation. The authority to settle complaints at the outset is going to expedite dispute resolution and it's going to reduce costs and help the parties establish a stronger employment relationship and encourage self-reliance.

Bill 49 is also going to lengthen the period in which claimants or employers can appeal decisions on employment standards claims from 15 to 45 days. Both parties will benefit from the longer period of time to consult with legal counsel to consider whether an appeal is warranted. We get many requests presently for additional time.

We are also clarifying certain limitation periods to ensure greater certainty for employers and employees and to enhance compliance.

To eliminate the confusion associated with launching a proceeding or a prosecution under the ESA, the act will be changed to specify clearly that an employment standards officer must issue or refuse to issue an order to an employer to pay within two years of complaint. Where an investigation of a claim brings to light the violations affecting employees other than the complainant, an officer will be able to issue an order up to two years after these other violations are discovered.

We're also clarifying the need for launching a prosecution. The two-year time limit will remain.

Finally, we are ensuring that as a result of a successful prosecution a court can order the payment of money owed to an employee even if the time limitation has expired by the time the decision is made.

Bill 49 also clarifies employer rights under the pregnancy and parental leave provisions. The intent of these provisions was to ensure that any entitlement based upon length of service, such as vacation, termination and

severance, would continue to accrue during pregnancy and parental leave. However, based upon the wording in the current act, adjudicators have interpreted these sections more narrowly. We want to make sure these provisions read as they are intended to, and this is going to reduce claims and litigation in this area.

In addition, the bill will change the act so that the parties to a collective agreement will be expected to manage the resolution of all of their disputes in the same manner; that is, they will be asked to resolve disputes through the grievance procedure set out in their collective agreement. Most employment standards complaints in unionized workplaces today already use that method. That is going to allow the ministry staff to devote more time to dealing with claims that are made by non-union employees who do not have access to formal grievance procedures and will help us provide better and faster service.

We are also proposing to utilize private collection agencies to recover money owed to employees by employers. This is a very time-consuming and expensive service which can be better provided through the specialized services available in the private sector. This will result in employees receiving money owed to them more often and more quickly. Currently, about two thirds of orders to pay are never collected. We expect that the more rigorous collection of orders will put more money into the hands of workers and result in increased employer compliance with the act and the orders to pay.

What this will do is allow our employment standards officers to concentrate on the work of enforcement. Unfortunately, since 1993, when the previous government disbanded the ministry's collection unit and discharged 10 employees, our ESOs have been expected to add collections to their workload.

0920

We are also making a number of changes to modernize the system to provide for better enforcement of standards. Employees will be able to file their complaints with us by fax, investigating officers will have access to electronic records and the ministry will be able to serve notice on the parties by any form of verified delivery.

Other Bill 49 amendments clean up language in the act, simplifying some sections and making it easier to understand.

Lastly, members will recall that Bill 49 includes a provision intended to increase the flexibility of unions and management to negotiate certain employment standards as part of their collective agreements. We believe that freely negotiated terms and conditions of employment not only reflect the needs of the changing workplace and employer-employee relationship but that they encourage greater compliance with the act. Our proposal would therefore allow the workplace parties to negotiate a package of standards for hours of work, overtime pay, paid vacation, public holidays and severance pay so long as the overall package exceeds the standards set by the act.

We remain committed to providing this flexibility to the workplace parties and we have been asked for that flexibility. However, given that we are going to have a fuller discussion about the framework of employment

standards during the upcoming fall review of the act, we believe this provision should be considered in the context of the future discussions and I am proposing to move that provision out of Bill 49 and into the comprehensive review.

That concludes my presentation on the content of Bill 49. However, I want to make a few comments regarding some of the criticism that I know is going to be levelled within the next few weeks. First of all, I want you to know that I agree with many of the problems that have been identified by the critics of the Employment Standards Act. They are not new problems. They have lingered without the attention of previous governments for years.

This government has decided that we are going to attempt a complete review of the act and we are going to change that. In fact, we have been vigorously dealing with the backlog, and I want you to know that the backlog is the smallest it has been in five years. Last year we had a backlog of 4,000. This year our backlog is down to 2,600.

We are concerned about employment standards. We are concerned about protection. We know the legislation is out of date; we know it cannot be properly enforced; we know it's been that way for years. As I said before, previous governments have not attempted to make any changes. They have simply amended it. They've made it more complex. We want to change that.

Unfortunately, the Employment Standards Act has stood still while the workforce and work itself have changed dramatically. That's why the act does not provide adequate protection for some emerging jobs, such as telemarketing, and the changing structure of work in the garment industry. The comprehensive review of the act that we are proposing to do is going to address those problems.

The purpose of the Employment Standards Act is to establish appropriate minimum standards for vulnerable employees and I intend to do exactly that. I intend to do it in a meaningful and an understandable way, and I'm going to do it in consultation with the employers, the employees and the trade unions.

This bill does not take minimum standards away from vulnerable employees. On the contrary, what Bill 49 is going to do is to allow for more effective enforcement and it's going to help us to focus our resources where they can be most helpful. So we, for the first time since 1974, are going to address the problems that the critics of the Employment Standards Act have identified for years. This is an opportunity for all of the critics to work with us, help us to understand how we can make the act better, how we can ensure that we have the basic protection that is necessary for employees and who should be covered by the act.

I welcome your input now on Bill 49. I look forward to your input as we review the entire act. When we are finished, Ontario's employers and employees will have an act which balances the rights and responsibilities of the workplace parties and which much better protects Ontario's most vulnerable employees. It will be an act that responds to the changing labour market, the changing workplace and employee-employer relationship. Ultimate-

ly, it is going to contribute to the economic growth of our province and mean more jobs for our people.

I look forward to your deliberations. I look forward to your constructive advice in order to help us make the act better and I thank you for your participation in the public hearings.

The Chair: Thank you, Minister.

Interruption.

The Chair: Sir, you're out of order.

Interruption.

The Chair: Take your seat, please, sir.

Interruption.

The Chair: Take your seat or leave the room, please, sir. Clerk, would you please direct security to remove the person. Mr Duncan.

Interruption.

The Chair: Sir, there was an advertisement —

Interruption.

The Chair: The sort of disrespect you're showing today, sir, certainly won't further your case.

Mr Duncan, 20 minutes for the official opposition.

Mr Dwight Duncan (Windsor-Walkerville): We in the official opposition welcome the opportunity to discuss the Employment Standards Act and discuss the reform of the Employment Standards Act. We believe, and I said in the House and a number of my colleagues have said, that the Employment Standards Act indeed merits a full and thorough review, both in terms of workplace conditions as well as recognizing the broad changes that are sweeping through the economy today.

The history of the Employment Standards Act in this province goes back well before the early 1970s to the mid-1930s, when it was introduced and originally designed to keep unions out of Ontario and to provide an opportunity for governments to hamper the efforts of the unorganized to organize themselves and those who were vulnerable in workplaces to be protected.

When the minister speaks of reform and suggests to us that the government's intention is to protect vulnerable workers, I don't think we should be surprised when people come to hearings and speak publicly in communities that they're angry and they don't believe it. The facts belie the minister's undertakings.

First, this bill is a major piece of legislation whose first priority, I think, is to implement the cuts in funding that the government has taken to the employment practices branch of the ministry. The minister did not mention in her remarks that her government has cut the money available for enforcement by 26.6%, or \$16 million. The minister did not note that the number of officers available to enforce the act has been reduced by 45. We are all cognizant of the backlogs and the difficulty government has in enforcing statutes like the Employment Standards Act.

For a government that is intent on public hearings and public consultations, I guess in light of your record, Minister — Bill 7 I remember vividly. A huge statute that amended every aspect of labour-employer relationships in this province was passed and became law without public hearings, without discussion to even look at the broad number of amendments your government brought forward at the last minute. I submit that this government has

created a climate of labour market instability, one which ultimately will cost not only those vulnerable workers whom you have abandoned but the employer community through days lost to strikes, to work actions, to less productivity and less efficient workplaces.

I submit that if the government was serious in its approach to amendments to the Employment Standards Act — the minister suggests on the one hand that we've had an ad hoc approach over the past 23 years. I would submit if it was the minister's intention to deal systematically with the act, she would not bring forward her changes in a piecemeal fashion. I would submit, as my colleagues opposite have said, that if we were intent on looking at modern workplaces and adopting our workplace protection legislation to reflect modern reality and also do it recognizing the financial constraints that any government would be placed under, we would be doing it all at once. We would be dealing with the real issues.

0930

One of the reasons the Employment Standards Act hasn't been amended in a systematic and comprehensive fashion, quite frankly, is that the statute touches on more workplaces and employees than any other piece of legislation that we will deal with. Historically, the minister will be aware, both employers and workers get very nervous indeed whenever you put this statute on the table for discussion. That is not to suggest for one minute that we ought not to, because I concur with the minister that we ought to be paying a lot of attention to this statute today. But I would submit that if the government were serious in its approach to reforming how we protect workers in this province and how we enforce minimum standards and how we cope with employment practices in this province, the government would have held a royal commission on the Employment Standards Act prior to bringing forward legislation. They would have done their full discussion paper prior to cutting \$16 million from the budget of the employment practices branch of the ministry.

I would submit further that the reality of the amendments contained in Bill 49 belie the minister's statement that this is not an assault on the minimum standards that employees in this province have enjoyed. The minister argues that the changes in some of what she would term more administrative issues to provide better enforcement really don't affect 90%. The problem, Minister, is that the Employment Standards Act is present to protect the 10%.

All of us in this room, I think, would acknowledge that the vast majority of employers in this province are good employers and all of us would acknowledge that the intent of government or the intent of an Employment Standards Act ought not be to penalize employers. But we also acknowledge and we have seen as recently as this spring, literally a week before you introduced your bill, that sweatshops still exist and people feel vulnerable.

I would submit, Minister, that this legislation puts the province on the slippery slope to a right-to-work jurisdiction. That doesn't surprise me, because the minister's actions to date and the statements of her colleagues in the House indicate unequivocally that that wouldn't be such a bad thing from their perspective.

When you provide an opportunity in a collective bargaining situation for certain minimum standards to be bargained away, as you have done in this legislation, in exchange for some undefined, comprehensive minimum standard, what you do is set up a condition whereby if ABC widget manufacturer that's unionized negotiates an agreement like that here, then XYZ widget manufacturer, who's not organized, will want the same flexibility. I would submit that this type of approach is wrong and that in fact the bill and the government's agenda with respect to employment standards have a lot more to do with saving money than protecting workers. The government's approach has not been balanced and has not been fair, I say with respect to the minister.

If the government were being balanced and attempting to be fair, we would have a comprehensive review of the statute now. We wouldn't be dealing with it in an ad hoc fashion as the minister is doing. The minister takes great pride in saying, "We're going to deal with it," and criticizing previous governments for dealing with the statute in an ad hoc fashion, and yet her first move in the area of employment standards is to bring in ad hoc amendments to the legislation.

We regret the course that the government has taken on this bill because it's going to further poison the ability to have a discussion around modernizing employment standards. We won't be able to discuss, I think, down the road issues around corporate responsibility. We won't be able to discuss, without the poison that's been put into this climate, the difficulties that both employers and employees have in the modern economy.

We would welcome a full-scale, comprehensive debate. We would like to talk about the statute in terms of its entirety, but we believe the government is continuing to pursue an agenda that is unbalanced and unfair and does not address the needs of all workplace parties. It is our view that the labour market instability that's been created by this government, first through Bill 7, through its WCB reforms, through its proposals with respect to occupational health and safety, will be further enhanced by this legislation.

While we recognize Ontario's place in a global economy, we don't believe Ontario ought to be a lowest-common-denominator province. We believe Ontario should lead. We believe our competitive advantages are in areas of high technology with a highly skilled, highly trained workforce, and we also believe that Ontario ought to be better than other jurisdictions. We ought to afford protections that aren't available in other jurisdictions. We believe the productivity gains that we've seen in our workforce in the last 15 years ought to be recognized with better wages and better protection for the most vulnerable.

We think the government's approach on employment standards looks backwards, shows no vision and is designed not to protect workers, not to provide more efficient enforcement of minimum standards, but rather to save money. That's not a bad thing in and of itself. I don't think anybody in this room would disagree, if we can do more for less, that we ought to, but we think that those savings and where we make our choices and where we set our priorities speak volumes about what the real

intention is, both in this legislation and in other statutes and other initiatives the government has undertaken.

So we too welcome the opportunity to listen to what the people here and across the province have said. I have had the opportunity to meet with, as the minister and the critic for the third party have said, literally hundreds of people in the course of the last few months, and we welcome the opportunity to hear what people have to say, employers and employees.

I say to the minister, we would welcome and we would support her if she withdrew this bill and took its most controversial provisions and put it into the full discussion of the Employment Standards Act, which is going to start in four months in any event. But we know that this bill is not about protecting workers and about efficiencies.

0940

Interjection.

Mr Duncan: Are you agreeing to it?

Mr John R. Baird (Nepean): She did. Didn't you listen to her opening remarks?

Mr Duncan: You're prepared to withdraw the bill and —

Interjection.

Mr Duncan: I would like you to withdraw the bill and put it all into one set of hearings and discussions and we could proceed. But the government's agenda here has nothing to do with employment standards. It has nothing to do with protecting injured workers. It has everything to do with cutting and with implementing the budget cuts that they talked about.

To conclude, while we would like to find a way to do more with less and we're prepared to listen to ideas that people have around enforcement, we don't think you begin by stripping minimum rights from vulnerable workers.

We look forward to the discussions that are going to go on over the next four weeks and we look forward to the minister joining us in those discussions as we travel Ontario.

The Chair: Thank you, Mr Duncan. We'll now have 20 minutes from the third party.

Mr David Christopherson (Hamilton Centre): The Employment Standards Act in the province of Ontario is very much the only real workers' bill of rights that exists, and Bill 49, entitled the Employment Standards Improvement Act, is an insult to the workers of this province and an insult to the bill of rights that they now have.

This government brought forward a bill into the House, having met with Ontario labour leaders, and said: "These are minor changes. They are of a housekeeping nature only. There's nothing here that anyone should be concerned about." Many of Ontario's labour leaders went off to a national labour conference. When the bill was dropped on the floor of the House, we saw very clearly that there were major changes here, that many rights that workers now have — there's no improvement here. These are rights that are being taken away from workers and it was very clear in the legislation.

The only reason we're having these hearings is because the New Democrats stood up and said, "You're not going to get away with taking away these rights without at least giving the people of Ontario an opportunity to be heard."

That's the only reason we're here today and everybody knows it.

I would say to you that given the fact that you're pulling back one of the more controversial issues, which is the flexible standards, you're already starting to cave in because you have no credibility on this issue. You said this was minor housekeeping and you've already said, "There's one in here that's so controversial, we're going to pull it back." We're going to suggest to you over the course of the next four weeks that there are a lot of changes in here that are major in nature and take away major rights, and this is only the beginning.

You've already said that you want to take a year to look at a major overhaul of the Employment Standards Act. Then why on earth would you bring forward a document, having told people these are minor changes, and say that you're going to take another year to look at the rest of the bill?

There's only one reason for that. You need to make these changes so that you can lay off the people in the Ministry of Labour who are necessary for you to reach your target figures for fiscal reduction, to slash the budget of the Ministry of Labour. The way you do that is by making sure there aren't rights to be enforced. If you take away the rights in the law that need to be enforced, you don't need as many people to enforce them. So you can lay those workers off, lay off those enforcement officers. That's how you're going to save your money. You're going to save money, as you have in every ministry in this government, on the backs of the most vulnerable people in our society, and this is no different.

We've said from the beginning that every time you suggest a change to labour laws in this province, you need at the very least to have public hearings. Minister, you talk about the fact that your government cares about workers and you care about injured workers and you care about what people have to say and you care about listening. Where were you listening on Bill 7?

Bill 7 went well beyond the mandate that you ran on. I grant you, you ran on a platform of revoking Bill 40, and when you brought in Bill 7, it went well beyond that. You took away and changed measures in that law that you did not talk about in the election campaign. They're not contained in the Common Sense Revolution. You tabled that document and you rammed it through the House without one day of hearings. Then you have the gall to say to the people of Ontario that you care about what they have to say about things.

It's an insult, Minister. It's an insult when you take a look at your track record. On top of Bill 7, we've already had Bill 15, where you took away workers' rights to have an equal say on the running of the Workers' Compensation Board. You've already done that. We've got Cam Jackson's report floating around, which is an attack on benefits to injured workers, when you ran on a platform of saying you would never do anything to hurt injured Ontarians; disabled Ontarians need not fear this government. Yet your intent on WCB reform is clearly to take away benefits and rights that injured workers deserve. That's your agenda. You've already killed the Workplace Health and Safety Agency; again, a proven entity that gave results and gave workers an equal say in planning

and training around occupational workplace health and safety. You've killed it.

You've slashed the minimum training necessary for members of joint health and safety committees. People are active in plants and offices. You've already slashed the minimum required time for training there.

You're gutting your own ministry. There's not a chance in hell that you can take out the kind of money that you're going to take out of this ministry and lay off the number of workers in that ministry without affecting the ability of the most vulnerable workers in Ontario to have their rights protected.

You've stated that you're going to open up the Occupational Health and Safety Act. Nobody believes that you're going in there to make that better for workers. Oh, you'll probably put a title on it, as you did this. You'll probably say, "An improvement to the Occupational Health and Safety Act." More Orwellian doublespeak. And then inside the bill you'll take away one right after another right after another right, and when you add it up, this government has a track record that's there to be seen.

It's not rhetoric. Go look at the record. You have set out to change the balance of power in this province from one of saying that there needs to be fairness and balance, to one of saying, "Workers and their powerful unions have far too much power and we've got to take some of that away and give it back to the employers because that's how we're going to be competitive with Mexico and other Third World nations." That's what your vision and future of this province is all about. This bill is a part of that. But it's only the beginning.

We know that when you take away the shorter complaint period — you can throw all the stuff you want, Minister, on the floor as to why you're doing it, but the reality is there is no improvement in saying to workers: "You no longer have two years to file a claim. You only have six months." Even the Tories can't twist that enough to make it sound like an improvement.

You're lowering the maximum claim available from one right now that says, "Whatever you're owed, you're legally and legitimately entitled to go after, and our ministry will ensure that those rights that you have to go after that money are in place." You've said now there's a cap of \$10,000. How on earth do you expect any worker to believe that this somehow benefits them? Before you had this bill, they could go for whatever they were owed. Now they can only go for \$10,000. No matter what the circumstance, they can only go for \$10,000. How is that an improvement?

Oh, you're going to talk about exceptions and I can hear John Baird, the wheels turning in his head already. All these arguments are going to come out. But the fact of the matter is, if you cared so much about making sure workers could collect that money, you wouldn't bring in the cap in the first place. You must think the people of Ontario are stupid, and that's what's so insulting, Minister, that you don't even have the decency to say, "Yes, we're going to slash the benefits and rights that workers have because we think that's the best way to go to help our business friends and because that's the vision we have of Ontario." At least then you'd be upfront and honest about what you're doing.

You're now going to bring in a minimum claim. In the bill you said there will be the allowance, enabling legislation to allow your cabinet to bring in a minimum level that one can go after. We don't know what that is right now. Unless you're prepared to tell us today what that is, we don't know. Quite frankly, whatever it is that you announce when the spotlight is on can be changed through another decision of cabinet at the very next cabinet meeting. So the fact is, you've decided that at some point, whether it's \$250 or \$150, those amounts aren't important enough for workers to have the right to go after. There can be no other explanation. You've decided that's not important. Well, that kind of money may not matter much to you and a lot of your very rich and powerful friends, but that means an awful lot to the most vulnerable people in our society. You remember them — the poor people, the working poor, the ones who are paying the price for your 30% tax cut, because people making \$250,000 a year aren't paying for your tax cut.

0950

You haven't done anything to the people who already have in this province. There's no fairness in this agenda. It's all about taking from those who don't have and giving to those who already have. It is that simple. It's not that different from what Ralph Klein is doing out in the west; it's not that different from what Newt Gingrich and Bob Dole are talking about in the States. This must have been a big week for you, listening to all that hard, right-wing nonsense coming out of the States. All of you must have been huddled around your TVs drooling, listening to the message coming out of there, because that's what you want Ontario to be.

You're going to privatize the collection agency. If there's an argument to be made that there's a better way to do it, you would have a lot more credibility and have a lot more people willing to listen to you if you didn't have a constant mantra that says, "If it moves, privatize it." No matter what, you just so fundamentally believe that whatever it is, it's got to be better if it's privatized. So you have no credibility on this issue.

When we look at the procedures that are being put in place, you're denying workers options that they now legally have. Remember, the whole purpose of the bill is to help workers, protect workers. It's not supposed to be to go after them and punish them. They are the wronged party in these cases. That's why the ministry is there; that's why the enforcement branch is there. When you put in procedures that deny options to workers as to whether they can go through a civil suit or go through the ministry or go through a grievance procedure, you eliminate some of those procedures, you're denying workers options that allow them to maximize their rights, because all they're asking for in most cases is money that they're owed.

You're saying to them now in this bill: "We're no longer in the business in the Ministry of Labour of protecting your rights and going after the bad bosses. That's no longer our business. Maybe what you need to do is to go off to the courts." Again, courts cost money. Most of the people who need the Employment Standards Act are people who don't have good collective agree-

ments, because in most cases good collective agreements go well beyond the basic, fundamental bill of rights.

You don't seem to have a concept of who's affected. These are workers. Many of them are immigrant workers. Many of them are women. Many of them are on the borderline of poverty. They can't just call up their buddy the lawyer or run up whatever a legal bill costs, because in most cases they don't have that kind of money, and perhaps the amount of money involved doesn't warrant it. In many cases, as a result of this bill money that workers are legitimately owed will be denied to them. Why doesn't that seem to bother you? Why do you feel so comfortable protecting the most powerful and giving the back of your hand to the most vulnerable?

You've already told us this is only the beginning. Doesn't that make everybody in the province feel good? More of this is to come. We still haven't seen the final review. Your discussion paper's not out yet. You've said you're going to open up the Occupational Health and Safety Act. We know you're going after injured workers under WCB. God knows what else you're dreaming up in the background that you're going to ram through while you still have power in this province.

I want to close my comments by again reinforcing the message that I opened with, and that is that the only reason we're having these hearings is because the NDP led the fight to force you to have public hearings. It's a minor victory that you're at least pulling the issue of flexible standards off the table. I think it's because you know that with that you have no credibility, no ability to say that these are only minor and housekeeping.

Let me say this: If you also think even for a moment that by pulling that clause out — which in this case is the one that affects organized labour, unions the most, because not all but most of the other clauses in this bill relate to non-union employees — the labour movement is going to back away because you've taken away one of the more controversial issues around it, you've got a surprise coming, because organized labour is linked with the unorganized in this province, community groups, legal clinics, organizations that are helping immigrant workers, all those most vulnerable, and there's a coalition developing around this. I assure you that the Ontario Federation of Labour and the rest of the organized labour movement are not going to back away because you've thrown some bone out here today. They're going to stay on you, stay on this issue and stay on this government all the way through these hearings. Every time you go after workers, they're going to be there defending the most vulnerable, because this government sure isn't.

ONTARIO CHAMBER OF COMMERCE

The Chair: We'll now have our first presentation of the day, the Ontario Chamber of Commerce. We're right on schedule. Good morning.

Mr Ian Cunningham: Good morning, Chairman and members of the committee. My name is Ian Cunningham. I'm the director of policy on the staff at the Ontario Chamber of Commerce. With me this morning is Jennifer Wootton-Regan, a member of our employer-employee relations committee. Jennifer is a lawyer who practises

exclusively in the area of employment matters. She met with employers, other employer groups and many of her colleagues to facilitate the chamber's brief this morning, so I'll turn it over to Jennifer.

Ms Jennifer Wootton-Regan: Good morning. Let me just start by advising you that the Ontario Chamber of Commerce represents over 200 community chambers and boards and over 65,000 employers in this province. Our members include both large and small enterprises in all sectors of the economy. We welcome this opportunity to meet with you today and to address Bill 49, the proposed employment standards improvement legislation.

We wish to state at the outset that the Ontario Chamber of Commerce applauds the government's action in undertaking a two-stage reform of the Employment Standards Act, and we support Bill 49 as the first step in that process. The Employment Standards Act itself has become outdated, particularly in light of the ever-changing nature of work. It fails to take into account the realities of an evolving workplace. It also does not afford employers and employees the necessary flexibility that would benefit all workplace parties. Indeed, as legislation added to over the years without a complete inquiry into its underlying framework, the act has become cumbersome and distinctly non-user-friendly. With respect to the plethora of exemptions under the act, the 1987 Donner report stated, "The complete picture of exemptions is difficult to piece together from the act itself, since the exemptions appear in so many different sections." To these ends, the chamber enthusiastically awaits the second phase of reform and supports the stated goals of promoting greater self-reliance and flexibility among the workplace parties.

1000

The government has stated, and the minister has reiterated today, that Bill 49 has three goals: to allow the Ministry of Labour to administer the Employment Standards Act more resource-efficiently; to promote self-reliance and flexibility among the workplace parties; and to simplify and improve some of the act's language. The chamber not only supports these goals but believes that Bill 49 meets them. In so doing, the bill continues to protect minimum employment standards for workers. Any claims that Bill 49 lowers minimum standards are not justifiable. On the contrary, for example, section 12 of the bill, dealing with the accrual of rights during pregnancy or parental leave, is an enhancement of the generally accepted interpretation of the current right in the act.

Now we'd like to comment on some particular provisions of Bill 49 which the chamber supports. The chamber is very supportive of those provisions which eliminate duplicate claims, limit recovery of money to a six-month period and extend the appeal period.

Employers are increasingly faced with defending claims of the same nature, or for the same remedy, in multiple forums. The problem is not restricted to employment standards complaints. It also spans a variety of employment-related statutes. However, in dealing strictly with the Employment Standards Act, non-unionized employees are able to have their employment standards disputes dealt with by the courts in wrongful dismissal actions as well as by the employment standards branch.

Unionized employees are able to file grievances under a collective agreement to be dealt with in the grievance and arbitration process and may also file complaints with the employment standards branch. Employers are often left vulnerable to defending the same dispute in multiple forums and must bear the associated costs. The public purse is often also unfairly burdened. In the case of multiple claims in the courts and to the employment standards branch, duplicative public resources are spent. These resources would be more efficiently utilized in a single forum. Given these facts, the chamber supports those provisions of Bill 49 that would eliminate the ability to pursue duplicative claims in multiple forums.

The chamber is also very supportive of the proposed provision of Bill 49 which would limit the entitlement to recover money under the act to six months instead of the current two years. The proposed provision places, quite properly, an onus on employees to make complaints in a timely manner. Delays in making complaints often create an unfairness to the employer in providing a defence. In addition, the older the complaint, the longer and more difficult will be the investigation with its consequentially greater costs.

The chamber is also very supportive of the proposed change to increase the time limit to appeal employment standards officer orders from 15 to 45 days. The chamber believes that the increased appeal period provides a more reasonable time in which to do several things: allow the parties to negotiate a settlement in lieu of proceeding with an appeal; fully consider the merits of filing an appeal; and, given that the Employment Standards Act requires the employer to pay the amount of the order plus administration costs to the director in order to even apply for an appeal, make the payment. In many cases the current 15-day period causes a hardship to employers.

Notwithstanding the chamber's support of Bill 49, we believe there are some provisions of the bill that require some clarification and further thought. To that end, we're going to propose a series of questions, primarily dealing with section 20 of the bill regarding enforcement of the act through the grievance and arbitration procedure.

First, is it appropriate to grant arbitrators the power to make any order that an employment standards officer is able to make? Under the act, employment standards officers have the power to investigate complaints, require production of documents for inspection and make inquiries of any person relevant to the investigation. It is unclear from the proposed amendments whether arbitrators are also to be given these powers. The chamber believes that the arbitrators should not be taking on this role, as any arbitration hearing will only take place after the various steps of the grievance procedure. The arbitrators' authority should extend only to adjudicating the complaint, with the grievance procedure taking the place of the investigation.

We also ask whether it's appropriate to grant arbitrators the jurisdiction to enforce all provisions of the Employment Standards Act. The proposed amendments grant arbitrators the jurisdiction to enforce the entire act, and the chamber believes there are some provisions which should not be enforceable by an arbitrator under a collective agreement between an employer and a union.

For example, under the proposed amendments an arbitrator would have the jurisdiction to make a related employer declaration. This would unnecessarily complicate and lengthen any hearing. The chamber believes that the related employer provisions of the act are unclear and need to be amended in any event.

We also ask, what is the process to appeal or review an arbitration decision enforcing the act? The bill is unclear about whether an arbitration decision may be appealed or if it is to be final and binding and therefore may only be judicially reviewed. The proposed provisions state that an arbitrator may make any order of an employment standards officer. Under the act, the officer's orders can be appealed to an adjudicator or referee. It is therefore arguable that an arbitrator's decision could be appealed to an adjudicator or referee. Whether or not the government intended that an arbitrator's ruling be an extra step in the employment standards adjudicative process or replace the referee/adjudicator decision is unclear.

We also ask whether the time lines in the Employment Standards Act or the collective agreement are to prevail. All collective agreements set out time lines in which grievances must be filed and processed. In many cases these time lines will be different from the act's. These facts necessarily raise the question of which time lines are to prevail. For example, most collective agreements require that grievances be filed within a particular time period following the events giving rise to the grievance. That time period is sometimes in the neighbourhood of five to 10 days. Under the bill, however, complaints may be filed in a six-month period. The chamber believes that collective agreement time lines should prevail in order to ensure consistency. Indeed, grievances will be filed which will allege both violations of the Employment Standards Act and violations of the collective agreement. In such cases, consistent time limits would be very important.

It is also unclear from the proposed amendments whether an arbitrator's ability to award damages will be restricted by the six-month recovery limit. The bill is not clear in this regard. However, the chamber believes that the remedial jurisdiction of arbitrators should also be restricted in order to provide equal rights to all employees.

The final question we ask is whether expedited arbitration pursuant to the Labour Relations Act is available for grievances seeking to enforce the Employment Standards Act. Again, the proposed amendments are unclear in this regard. However, the chamber would support the availability of expedited arbitration.

Finally, the chamber supports the minister's proposal this morning which would see the provisions of Bill 49, specifically section 3, that allow for a greater right or benefit assessment as a package to be moved to the second phase of reform. The chamber strongly believes that allowing a greater right or benefit as a package is a fundamentally important component of allowing workplace parties the freedom to mutually agree to arrangements which, if viewed separately, would not be in compliance with the act. As we've stated, the chamber supports the goal of promoting self-reliance and flexibility, and the ability to assess greater right or benefit as a

package would help to achieve such a goal. The chamber believes that the current section 3 of the bill does require some clarification and expansion and raises concerns regarding the practical implementation. We support the proposal that it be moved to phase 2 and we would be enthusiastic to see this theme re-emerge in the second phase of reform.

In conclusion, the chamber supports the two-stage Employment Standards Act reform process and supports Bill 49 as the first step in the process. Notwithstanding this support, we would urge consideration of the various questions we've spoken about today in order to clarify certain of the proposed amendments.

We thank you for this opportunity to make our submission and welcome any questions you may have.

The Chair: Thank you both. Your timing is bang on, almost to the second. Thank you both for taking the time to make your presentation, a very detailed submission.

1010

ONTARIO FEDERATION OF LABOUR

The Chair: Our next presentation will be the Ontario Federation of Labour. Good morning, gentlemen. Again, we have 15 minutes for you to use as you see fit. Divide it for your presentation. I recognize two people and not the third. For the benefit of Hansard I wonder if you'd introduce him too.

Mr Gordon Wilson: I have with me today Mr Ken Signoretti, executive vice-president of the federation, and Mr Chris Schenk, a research director of the Ontario Federation of Labour. My name is Gordon Wilson. I'm the president.

I thank the committee for the opportunity to make a presentation. In saying so, I want to register at the outset our disappointment that we only have 15 minutes. I understand that this change was made because of the overwhelming number of persons who have applied to make presentations before the committee, but obviously a fairer way to do things would have been to extend the hearings rather than cut the time on this extremely important issue, unless of course people don't consider it to be important. But I want to tell you that the majority of people this will impact certainly do.

We have submitted a brief which sets out our position. We commend it to your scrutiny and ask you to review it. Let me say at the outset that what is clear about this issue is that the government's intent, I think, can be found in the minister's statement this morning in which she said that the main thrust of the bill was to allow Ontario's workplaces to become more competitive.

What I find difficult about that statement is that intellectually, if you really want to make Ontario's workplaces competitive and you want to adopt the whole free market strategy, why don't we then impose legislation in this province or the lack of legislation one would find in countries like Indonesia or Guatemala or the maquiladora zones in Mexico? Why not like we have in the United States, where 1% of the population now controls 42% of the work?

I think the difficulty here is that the government is attempting to pretend to be doing one thing, and the

reality on the other side is that it is not. You will find during the course of these hearings that on one side clearly will be employers, employer associations, members of the government in defence of these changes; and on the other side will be members of the opposition, workers, unions, community organizations, all those people who will be ravaged or impacted negatively by this legislation.

We ought not to kid ourselves about what the issue is here today. The issue is making changes that will strengthen the employer's ability to demand further concessions from workers who are in the workplace. This will simply erode the minimum standards that other societies and governments have understood to be necessary to protect the most vulnerable people in Ontario's workplaces. That vulnerability is vastly increased under the bill the government is currently proposing.

We are pleased, of course, to see the minister retreat from her position of putting the issue of flexibility in the bill. We would ask the minister, through Mr Baird, her parliamentary assistant, not to put it in the other bill that they're coming forward with. That will simply clog up the collective bargaining process. It will create a climate of more hostility and put another problem on the bargaining table. The law is the law. Put it in place, and let's not further compromise and make more difficult the collective bargaining process in a very difficult period of time.

The main thrust that's wrong with this bill, in our view, and we would urge the government simply to withdraw it except for a couple of parts I want to allude to, is that it makes a very basic assumption that is flawed. It assumes that employers in this province, when you remove certain basic rights, are going to put the interests of workers ahead of their own personal interests or those of their business when times get tough. The reality is that there are a lot of laws out there that protect employers now. Employers have all sorts of entitlements under common law. What workers have is enshrined basically as a minimum in the Employment Standards Act and of course some other pieces of legislation. To assume, as the government blithely seems to assume, that employers will now comply with the interests of the workers in the absence of some process — the law — which says that they have to comply, is a practice in naïveté.

Our hotline — some government members may cringe about this; opposition members may think it's important — the reality is that the hotline we've had at the federation the last few weeks has just been overloaded. Why? Because employers out there are taking advantage of the people who are most vulnerable: those at the low end. They're just saying that their employers are blatantly disobeying the law because they know the enforcement has been removed from the process, by and large, and that employers out there who want to be — I don't include all employers in that category, but there is certainly a number of unscrupulous employers who are taking it off the hides of their workers.

This bill ignores the history of this province and the need for a law in the first place. We tried to make that case in the first part of our brief.

Second, I think another major flaw is that it assumes the relationship between employers and workers is

somehow equal. I want to tell you it isn't. The chamber of commerce, which spoke before us, obviously applauds this bill because they see it as once again strengthening the position of their membership, their employers, as they move towards implementing what will be those parts of the law that have been removed. Let me, if I can, just give you a couple of examples.

The law under section 20 of the bill, section 64.5 of the act, says that unionized employees have considerable access now. They have access to considerable investigative and enforcement powers in the Ministry of Labour. The government passes the law, therefore it's assumed the government's responsibility is to enforce the law.

What Bill 49 is going to do, however, is eliminate recourse by unionized employees to this avenue, and workers will be forced to use the grievance procedure. Well, that's quite interesting. What if you are a number of workers in a small local union in an isolated community, there are 20, 30, 50 of you, and your employer happens to be a branch of a large multinational corporation and says: "We know how to put the grievance procedure under the ground. We'll just clog it up. We'll create all these violations under the now non-existent requirements of the Employment Standards Act, and if you don't like it you can take this to arbitration"? If you're 50 people, you probably have a bank account in a local union of about \$1,000, and that would be worth about 20 minutes of an arbitrator's time in today's real world out there.

Second, the ministry is proposing to end any enforcement in situations where it considers violations may be resolved by other means, namely, the courts. You tell me what workers on minimum wage can go out there and afford to hire a lawyer to take forth their case to get some justice. There is such an imbalance of power between workers and employers here, it just boggles the mind. How do workers possibly compete with employers who have as their resources considerable power and finances?

The max of \$10,000 is really quite curious to us. I always thought that a buck that's owed is a buck that's owed and somehow it should be collected. Is the government coming forth — I'd like to see it — with some other legislation which says we can now cap the bank's profits or ability to collect when somebody fails to make a mortgage payment? Are you doing anything about tuition fees? What about bus fares? Are you going to cap that so that people out there can get a break? What about capping child care costs so that people get a break? Why just workers? Why are you capping the ability of workers to collect what's owed them and yet blithely turning the eye in the other direction when there are areas where workers should be collecting?

Finally, the observation we make is around the privatization and collection function of the Minister of Labour's employment practices branch. This is simply government divesting itself of its responsibility. On the one hand government is going to say it has the right and the empowerment in which to pass legislation, but on the other hand it says, "However, having done that, we're going to farm that stuff out to other people to take care of."

Let me make a couple of other comments in the short time — far too short, in my estimation — we have available to us this morning.

1020

I want to put on record that the federation is not totally negative about this whole process. On pages 14 and 15 of our brief — and I haven't got time to go into it — we do support the minister's efforts around vacation entitlements and certainly those provisions under pregnancy and parental leave. They are positive steps that a government can take in recognition of what people are facing out there.

It is absolute naïveté to assume that employers are going to act in any interest other than their own, and when you strip away basic — and that's what we're talking about here. We're talking about basic minimum standards. This is not about two parties haggling over whether the lawyer's fee is going to be \$150,000 or \$110,000; we're talking about people who are currently out there trying to make a minimum wage because there isn't anything else they can make. I can tell you that if those of you who can read and have read the paper around our friend in Belleville and Port Hope and the Screaming Tale, he's indicative of far more employers out there than some people in this room would want to admit.

So we're asking, in the time that's available to us this morning, for this government to recognize the folly of attacking the most vulnerable. If you want to reduce the minimum wage, then why don't you have the courage of your convictions and come out and say you're going to reduce the minimum wage to \$2 or \$3 or \$4 an hour, whatever it is you think it ought to be, because you can't pretend that you're protecting the interests of working people out there and then give employers the opportunity to circumvent, because of lack of enforcement and other reasons, that very basic minimum standard.

So at least be honest with us, at least say you think a worker out there is worth \$3 an hour and that's what you're going to do in law. Don't come through the side door by saying that we're going to have a law which says they're entitled to \$6.85 or \$5.95 an hour and then strip away the enforcement that allows the employer to circumvent the legislation and do whatever the heck they want to do out there.

I notice my friend Mr Baird is smiling, but if he was a minimum wage worker maybe he wouldn't be smiling at that kind of a conclusion that I'm drawing here today, because I live in the real world, John. I know what people face out there because they come to me every day, and I can tell you, we've got hundreds and hundreds of calls in the last three weeks on our hotline where people are arguing that their employer is putting it to them.

So, two things: one, increase the current enforcement practices of the employment standards branch to allow it to police the 300,000 workplaces in the province of Ontario; and two, withdraw this legislation that's designed simply to assist employers into beating the heck out of the working people, with the exception of the two clarifications that are minor but important nevertheless that I mentioned earlier.

Mr Ken Signoretti: I'd just like to make a comment if I might. First of all, and I'm speaking to the parliamentary assistant, I would like for him to convey for me my sentiments. The minister is gone. I believe the minister to be a very decent and honourable person. I can recall when we came through these hearings many, many months ago, whether it was Bill 208 or Bill 165, her basic argument as the labour critic at the time was, "You don't represent all the workers out there; you just represent a small majority of people." She said, "We're concerned about unorganized workers."

If you're concerned about unorganized workers, I'm telling you, you're really sticking it to them. You'd better understand that. That's what you're doing, this change that you've made with respect to the bill with respect to trade unions, and we're going to show our mettle that in fact we do support these people out there and we're going to be out there tough for them. Gord is absolutely right. Get off the crap about being nice. If you want these people to work for \$2 an hour, say it. Be honest about it, not flower this up about a whole bunch of things.

John, once again, I just close by saying to the minister, I expect her to do the honourable and decent thing as an honourable and decent person and withdraw the legislation.

The Chair: Thank you, gentlemen. We have three minutes remaining. We'll start with the official opposition.

Mr Duncan: Mr Wilson, just a brief question. At the conclusion of your document you indicate the two areas of the act, the amendments that you're prepared to support. Would it be the view of the federation that if there were to be a royal commission on the Employment Standards Act you would participate in that, if we were to look at the whole act in terms of trying to find areas that we could improve on or make work better?

Mr Wilson: I'm not going to hedge. Obviously a royal commission we would approach from the basis of attempting to find a way to improve the lot of those people who are being hammered out there. No question, what's happening in our society is that people are being ratcheted down further, and when you erode the minimum standards such as this, all you're doing is looking at a piece of it that assists those employers who want to ratchet it down even further.

A broader question — we haven't had any full discussions around that question because that wasn't part of the equation — but obviously if that were to happen, we would approach that with a view to increasing the protection of people at the low end. We're not talking about people who are doing well in our society. We're talking about people who are decent, hardworking folks who are trying hard to keep their families afloat, keep whatever they can on the table. It just turns my stomach to think that a government in the province of Ontario would want to make us look like Alabama. I just get absolutely incensed at that.

Mr Duncan: Just a quick supplementary. Would you say, then — it's obvious that you haven't said this — that this is the first step towards a right-to-work jurisdiction?

Mr Wilson: It's certainly the first step to making our economy far more competitive with some of those

countries I mentioned earlier. If you really want to have a competitive, free-market economy, then get rid of all the regulation that protects working people. That's what they do in those countries. Let me make an example: You have Ford Motor Co which took some steps in Mexico in the maquiladora zone when workers struck there a few years ago, which had the army come in and kill some of those workers in that workplace. This is the same Ford Motor Co that's down the road in Oakville. What's the difference? The political and economic environment. That's what's different.

Mr Christopherson: Gord, the minister has characterized this bill as minor housekeeping. I think it's important that the people of Ontario hear on the record today the response from the president of the Ontario Federation of Labour to that characterization.

Mr Wilson: When you set the stage to erode already minimum standards for working people, as this bill will clearly do, then you're not acting in the interests of those people it will impact upon on the one hand, which is the workers. That's why I said at the beginning, Mr Christopherson, when you look at the people who will come before this committee in these public hearings, you will have employers, employer trade associations, chambers of commerce, boards of trade, all saying, "Hurray, hurray, hurray, we're glad you did this. We support the government," and on the other hand, those people who will be negatively impacted will say, "We don't want it." So you can't sit there in government and say, "We're taking an impartial act." The reality is, this is a partial act on behalf of the employers and they're going to be the winners.

Mr Signoretti: If I could just make one comment to that. We've always viewed the Employment Standards Act as a charter of rights for workers, where there are basic minimum standards, where there's a floor. When you erode that floor, you're basically eroding their charter of rights. Gord is absolutely correct. The fact of the matter is, once you do that, where is the floor? There is no more floor and it keeps going down and down and down and down.

Mr Christopherson: My supplementary, since you gave the official opposition one, would be, in what way do you see this as further polarizing society in Ontario?

Mr Wilson: The same way that you're seeing cuts to compensation, undermining the ability of people to protect themselves in the workplace, the ability of people to bargain freely. All of those things are undermining what can be a placid environment and turning it into something much more ugly. I'm not suggesting this is going to happen in Ontario, but if one looks at the news at what happened in Australia in the last day or so, it makes you wonder and you get quite concerned. A number of people stormed the federal government building there and it wasn't pretty. I hope that never comes to that here. I would work, as everyone in this room would work, to avoid that, but you don't avoid that by creating divisions and continuing to widen the gap between the haves and the have-nots. The people at the low end are the have-nots.

The Chair: Mr Baird.

Mr Wilson: So nice to talk to someone from the ministry.

Mr Baird: I want to thank you for coming personally. I should point out though, with respect, you mentioned in your opening comments the case of the Screaming Tale.

Mr Wilson: Yes.

Mr Baird: I think one of the first, if not the first complaint we received at the Ministry of Labour came from the member for Scarborough East, who is sitting to my right, on that issue. So it's something I think we were particularly concerned with.

I had just a quick question with respect to collections. The previous government disbanded the collections branch of the Ministry of Labour and discharged 10 employees. Do you support the idea of going to private collections, and in that answer, what would you think is an acceptable level for the amount of dollars that are ordered to be paid that should be paid?

Mr Wilson: I think, Mr Baird, there's a considerable difference between a lateral transfer of work from one area to the other and that of simply saying, "We're contracting it all out holus-bolus."

I have some difficulties with private collection agencies, which will act again, because they are in business, to the best hand that they can deal themselves, given the situation, as opposed to a government that I think every citizen has the right to assume acts in a dispassionate, unbiased fashion in trying to represent the interests of everyone. So what's the distinction? When you get into private collection, you're going to get the same kind of situation; people refer to them as ambulance chasers in other professions. You're going to get people who own those collection agencies taking the best haul.

By the way, the first time the Screaming Tale came to my attention was the two workers who had complaints in the labour council. I'm sorry I didn't read Mr Gilchrist's name in the Toronto Star, but maybe he doesn't buy it. I don't know.

1030

Mr Baird: Just as a supplementary, I just think from government, our motivation is very much to see workers get more of their money, and today, only 25 cents on the dollar is being collected. Once someone has actually complained, an investigation substantiates the claim and an order is issued, only 25 cents on the dollar is ordered. It wasn't a lateral move under the previous government, though, with respect. They discharged 10 employees and put the responsibility on to employment standards officers, who were already overworked as it was. But I guess —

Mr Wilson: But not overpaid.

Mr Baird: I guess the idea behind this is to see more workers get more of their money. If the collection agencies have a motive, it's to earn their fee, which will be paid for by the delinquent employer, so that in the end, more workers would get more of their money. That's how they would make money, by delivering for workers who are owed money. They don't make any money if they don't get the worker the money.

Mr Wilson: But John, what we found out in the last three weeks through the hotline is there are all sorts of workers out there who find themselves in an imbalance of power. To assume the employer and the employee have an equality of power is an erroneous assumption.

It's a bad starting point. It leads you to the wrong conclusion.

Mr Baird: Somebody's got to —

Mr Wilson: Let me finish my point. So what's happening out there is you're going to have fewer complaints, no doubt, because workers will be told, as they are in other jurisdictions, "You want to complain?" — shoom. And in today's economy, with the unemployment level we have out there today, it's not hard to replace workers and so you're going to have employers, those who are unscrupulous, and as I said before that's not all but it is a significant number, who are going to say, "These are the rules that I am imposing."

We had one call that came in and a woman who said, "I'm making \$6.85 an hour," or whatever it was; she was 10 cents under what she should have been paid to start with, "My employer has just told me my wages are \$4 an hour, and he's a heavy-hitter in a small community and I know if I open my mouth, I'm gone." Well, that's the imbalance that exists in a lot of workplaces in the province of Ontario. When you strip the minimum standard away from people and when you strip the enforcement that enforces that standard, then you gravitate to that kind of situation I've just described to you. That's what's wrong with Bill 49.

The Chair: Thank you, gentlemen; we appreciate it. I gave you a few extra seconds there and then some.

INFORMATION TECHNOLOGY ASSOCIATION OF CANADA FOR ONTARIO

The Chair: Our next group up this morning is the Information Technology Association of Canada, Ontario branch. We have 15 minutes for you to use as you see fit, divided between presentation and question and answer. I wonder if I might get you to introduce yourselves for the benefit of Hansard, please.

Mr Bill Petrie: My name is Bill Petrie. I'm the president of Information Technology Association of Canada, Ontario. With me today is Laurie Harley of IBM. We're delighted to be here to express our views on Bill 49. We've prepared a written brief, so I'll limit my discussion to a few key points.

The Employment Standards Act is very important to ITAC Ontario. We represent the information technology industry in this province, hardware/software firms, telecommunications firms. We employ about a quarter-million people. We're growing at about 15% a year. We're adding jobs so fast, in fact, that P.J. Ward, one of our members, announced that there's actually a shortage of 20,000 skilled workers in the Metro Toronto area alone.

Our sector is a sector which everyone is talking about. It's the new economy sector. It's brutally competitive. We're talking about a sector racked by change. Our product life-cycle in our sector is about six months. I just heard that Chevrolet was discontinuing the Lumina, which hasn't changed in 12 years. When you introduce a new product in our sector, it's got a life of about six months. Thousands of companies in Ontario are successful, we're competing successfully internationally, but we're competing in an environment which is so dynamic

that we measure years in terms of web years, which is three months.

What this means is that we employ highly skilled workers. We pay them very well. These workers are very mobile. These workers actually have skills which have a lifespan of about 24 months. That is, what you know today has to be completely replaced every two years.

What this means is that in our workplaces the hierarchical structures are gone. What we have are empowered employers and employees, dynamic teams working together. Skills are highly specialized. They're highly valued in the marketplace. Continuous learning has become a way of life. Our employees work hours that are flexible to meet the needs of customers. Work location is flexible so that we can work at home, on the road, or in our offices. Finally, organizational cultures are moving to high performance models where measurements and rewards are linked to overall results in the business and personal results.

There's a huge culture gap between the reality of our workplace and the rules in the Ontario Employment Standards Act, and that culture gap appears to be widening.

I'm going to ask Laurie now to comment more specifically on the Employment Standards Act and Bill 49.

Ms Laurie Harley: Thank you, Bill. As Bill points out, the rules of the Employment Standards Act clearly weren't designed with the information technology industry in mind and that's clearly understandable when, if you follow the roots of some of the provisions such as the hours of work, they really do go back to 1884 and the Factories Act and clearly to the Hours of Work and Vacation Pay Act of 1944. If you go back to 1944, just very briefly, when the eight-hour-a-day maximum was brought in, even in those days only half of the workplace actually worked those hours. So what you found was that in order to not create a significant problem for the vast majority of people in the workplace, the law introduced special treatments and those special treatments really became a way of putting flexibility into the act. But it was a complex set of exclusions, exemptions for some or for all parts of the provisions, special overtime provisions, and a very elaborate permit system. It may have worked then but it most clearly does not work today. It's the combination of these outdated standards and the complex special treatment provisions that are really a major irritant for our sector.

To illustrate how long these issues have been with us and to provide you some more specifics, in our written submission we've attached a brief that our company prepared for the Ontario Task Force on Hours of Work and Overtime which was commissioned back in 1986 by the Honourable William Wrye, who was then the Minister of Labour. It really expresses our concerns as well as we could express them today. The issues are exactly the same. The difference is that 10 years have gone by and the need for action has become even more urgent.

The report of that task force, which was tabled in 1987, found that the working hours regime in Ontario was complicated to the point of bewildering, and so complicated, and let me just make one quick quote, "that

its totality is likely understood only by a handful of persons."

I don't know if any of the members of this committee have looked at the current guide to the Employment Standards Act but I brought it along. It's this little purple book and it's known affectionately as the purple peril. If you haven't read it, I recommend it as mandatory reading because I think if you read through that you will agree that the task force's description back in 1987 is as valid today as it was then.

Merely updating these rules isn't enough. We need a pragmatic analysis of the regulations that really gets back to basic questions. What's the objective of the regulation? What's the cost of compliance? And perhaps more importantly, are there other ways of achieving the same objectives but with some more innovative approaches? To us, if you go through that process and that pragmatic analysis, you'll come out with an Employment Standards Act that is transformed and to us must meet five goals.

The first of those is that minimum standards must be there. We are not advocating scrapping minimum standards or safety net provisions. They must give protection but they must also have flexibility. It must be plain language legislation that everyone can understand and work with. We'd like the application and the enforcement of the act targeted to those in need of protection. We're going to hear a lot about those, I'm sure, over the course of the hearings. Their issues are valid and they need to be addressed. We would like streamlined administrative systems that reduce costs and improve effectiveness, and perhaps the final goal is innovative alternative approaches that recognize and promote self-reliance in the workplace.

Let me just turn very briefly to Bill 49. The government has said it's step 1 and it's there to make the act more effective in terms of administration. If I keep that in mind, I'd just like to walk very quickly through those five goals and compare them to the current Bill 49 as proposed.

The first one is: Does Bill 49 change any minimum standards? To be honest, we look at the bill and to us the answer to that is categorically no. We think the debate on minimum standards, how they should be updated, is a phase 2 debate, and we obviously look forward to that. What it does do is try to introduce some improved flexibility in unionized workplaces in order to negotiate a greater right or benefit. However, that to us falls far short of the flexibility we would like to see and we would like to see that flexibility ideally built into the standards themselves. Given that, we would certainly support the minister's announcement this morning to move that into the phase 2 debate. We think it makes more sense in that context.

1040

Does Bill 49 make it easier to understand the Employment Standards Act? We'd say yes, at least as far as clarifying some of the maternity and parental leave provisions, but again much, much more to be done. Plain language legislation to us is just essential. If you can't communicate it, you can't expect workers to understand their rights and you have a hard time, I think, expecting employers across the province to be able to comply with it.

Third and fourth goals: Does it help target enforcement and streamline administrative systems? I guess to us this is where it makes its major contribution and we do support the directions that are outlined in the bill that would use private collection agencies, that would require timely filing of claims and allow certainly electronic filing. That's one we can certainly endorse.

Finally, does it promote innovative approaches to self-reliance? Again we think yes, in the sense that it does introduce the concept of using internal systems, the grievance process in unionized workplaces to deal with the SA complaints, but again we think this is far short of what we need to do in the phase 2 debate because there are non-unionized workplaces in the province that have their own internal processes that allow effective resolution of complaints. We think that they should also be examined in terms of models of self-reliance.

So very quickly in summary, we think the Employment Standards Act is in desperate need of reform. We think it is particularly out of date for firms in our sector. We think Bill 49 represents a positive first step, but perhaps the most important thing it does is it launches the debate and we look forward to that phase 2 debate. We would urge the committee to focus on the facts that are in Bill 49 and to recognize that the critical issues are still ahead of us.

We would also remind you that change is never easy and that change to legislation that tries to provide basic protections is even more difficult than most. However, we think the greatest threat to an effective safety net in the workplace in our province is not Bill 49 but our inability to reinvent a regulatory environment that will work today and will stay us through to the 21st century.

The Chair: Thank you very much. That leaves us with five minutes of questioning. I think by consensus after that last round we agreed if it's five minutes or less, we'll divide it just into two questions and then we'll continue the rotation with subsequent groups. So we'll start this time for two and a half minutes with the official opposition, Mr Duncan.

Mr Duncan: Thank you very much for your presentation. Let me ask you this because, like you, I think our party's view is that the Employment Standards Act is due for a major overhaul, particularly in light of the changing economy and new industries that have come about.

Would it be the view of your association that given the complexity of employment standards and given frankly some of the divisions I've seen in the business community, you often see a division between smaller employers and larger employers around these questions, and given the sensitivity around the Employment Standards Act not only to vulnerable workers but to employers, would it be your view that prior to any kind of wholesale change to the act — you referenced the Donner task force, for instance — that the proper process to defining the new legislation would be through a series of public consultations, either in the form of a royal commission or a white paper prior to introduction, or would you be of the view that the government ought to proceed with legislation in the absence of those hearings before any kind of consultation would occur?

Ms Harley: The first comment I'd make, with all due respect to royal commissions, is I think we all know the problems with the act. I think what we need to do is put our heads around some innovative solutions to those problems. To me, that royal commission process sounds like a very lengthy one and I don't know that we've got the time to do that any longer.

In terms of the act, I think it's critical that we get on with phase 2. I guess what we see in Bill 49 is a message that says: Look. The act needs to be reformed. We've got some ideas on how we could try to make it more efficient in the next 12 to 18 months until those changes actually come about, and if that will save some money, if that will make the enforcement of the current act better, then I think we'd say fine, let's get on with that too, but let's keep our main focus on the comprehensive review. I do believe there should be, and will be is my understanding, consultations around that with all the stakeholders.

The Chair: That's your two and a half minutes.

Mr Christopherson: Thank you for your presentation. I'll ask the question directly. I think you commented on it, but I'd like to be clear. Do you think that the changes proposed are minor housekeeping?

Ms Harley: I think what we look for is minimum standard updates and, to be honest, I don't see anything in this bill that addresses minimum standards. We see some process changes. I think some of the issues that dealt with flexibility and the greater right or benefit, we're touching more on those, Mr Christopherson. So I do think they probably belong and will be more effective in a phase 2 debate. But to be honest, we have real difficulty understanding the concern about this bill as gutting minimum standards. We just don't see it.

Mr Christopherson: That's interesting. I was going to go on down a different road, but maybe I'll go down this one with you because I —

Ms Harley: Maybe you should tell me where you would have gone before. That might have been a better one for me.

Mr Christopherson: You would have liked the other one. If you've given me the answer I wanted on the first one, I think you would have enjoyed it. It would have been in areas of part-time work, contracting, teleworkers in terms of things that the law doesn't adequately address and things that it needs to, but I would obviously take exception and perhaps the difference is the type of work that you're in. It would seem like there aren't major changes, but I would just offer to you that for people who represent workers, either at legal clinics, in non-union shops or collective bargaining environments, the changes are significant and do make a big difference to them.

However, I think I will go down that second road simply because I do think it's important to hear from you what sorts of things — I'd like to hear a couple of examples of what kind of minimum standards. If you accept that the Employment Standards Act is basically a workers' minimum bill of rights, it really is the only thing that says when you go out and offer up yourself for wages, here are the minimum conditions that someone can subject you to.

In terms of the new world of work that I think you're talking about, what way do you offer up the flexibility you need, but keeping in place the idea that there are minimum standards?

Ms Harley: Let me give you one example, and Bill might want to add to it. The eight-hour-a-day standard is the one that comes to mind most readily. I think we would all agree that prolonged long hours have relevance to health and safety. I don't know that there's particularly strong empirical evidence on that, but I think just logically everyone in this room knows that when you work a long time and long hours, you feel tired and you need a break.

It seems to us that if you take perhaps what's even already in the act today and broaden it so that it's a monthly cap or in some cases even an annual cap where people actually can balance that they work for certain periods, perhaps for prolonged hours, more than eight hours a day because you've got an urgent customer situation you have to deal with, but then you may take compensatory time off. So it's a balancing, but you take that narrow window of one day and you broaden that out to provide greater flexibility.

That's the kind of direction we're talking about in terms of standards that still keep, if you like, teeth in them in terms of the protecting of workers, but at the same time bring in some flexibility.

Mr Christopherson: Are there jurisdictions in the world that have those —

The Chair: Mr Christopherson, will you make it very, very brief?

Mr Christopherson: Oh, sorry. Are there jurisdictions in the world right now that have been able to do that?

Ms Harley: I think the eight-hour day one is one that a lot of jurisdictions have broadened to weekly, for example, but to us Ontario has an opportunity here to lead the way. We agree we want to be leaders. We agree that if we can come up with an innovative program of standards, we will have a jurisdiction that will say to all employers, "This is fair and balanced, but it's flexible and allows you to get on with your business."

Mr Christopherson: My concern would be it's so easily open to abuse. You'd have to have very imaginative-type legislation wording crafted to make sure that it's not abused because it could be subject to such easy abuse.

Ms Harley: I'd say today it's pretty abused and I think that we've got enough talent and skills in this province to come up with some innovative ideas.

The Chair: Thank you both. I appreciate your time, coming and making your presentation here this morning.

PARKDALE COMMUNITY LEGAL SERVICES

The Chair: Our next group up is Parkdale Community Legal Services, Gail Sax. Ms Sax, it's my understanding you have another individual who wishes to appear under a pseudonym; is that correct?

Ms Gail Sax: Yes. I have with me a client of mine who would like to testify before the committee anonymously and also with us is a Tamil interpreter.

The Chair: Thank you. It's been discussed within the subcommittee. Are there any concerns by any of the members? Seeing none, just for the witness's protection and just a clarification, there was a short statement that was prepared for eventualities such as this, a sort of good news-bad news, that "while members themselves enjoy parliamentary privileges and certain protection pursuant to the Legislative Assembly Act, it's unclear whether or not these privileges and protections extend to witnesses who appear before committees."

For example, it may very well be that the testimony you give or are about to give could be used against you. I caution you to take this into consideration in making your comments. However, on the other side there is parliamentary precedence that if anyone does anything arising, in this case, from testimony before a committee — if an employer were to react — that would be considered contempt of Parliament, and the committee would have the power to deal against the employer.

1050

Mr Christopherson: On a point of order: With great respect, there has been no disagreement. Nobody has a problem. I think you're attempting to make this bigger than it is. Can we just get on with it?

The Chair: That's your considered opinion, Mr Christopherson, but I think it is somewhat precedent-setting to allow people to come to a public hearing and not use their names, so I want to make sure they have the full benefit of knowledge of how things work in this process.

None of that time has come out of your 15 minutes, Ms Sax.

Ms Sax: I'm Gail Sax, a staff lawyer responsible for workers' rights at Parkdale Community Legal Services. With me are a client of mine and Shyamala Shanmuganathan, a Tamil interpreter.

Parkdale Community Legal Services welcomes the opportunity to appear before the resources development committee on the review of Bill 49. Parkdale Community Legal Services is a community-based legal clinic in the southwest section of Toronto. Parkdale is a low-income, racially and ethnically diverse community. I am a staff lawyer at the clinic responsible for workers' rights.

The Employment Standards Act is the critical cornerstone of workers' rights in Ontario. It sets the minimum floor for workers' basic rights in Ontario. The importance of the act cannot be understated and, as our submissions will show, rather than amending the act to lower that floor, the government should be improving working conditions by raising that floor: the Employment Standards Act.

The workers' rights division at Parkdale Community Legal Services represents and works with unorganized or non-union workers. We represent workers on cases involving unemployment insurance, workers' compensation, human rights, Canada pension plan and employment standards. Employment standards cases represent approximately 50% of our caseload. Our clients reflect the community we work with. They come from the many employment sectors which are characterized by low wages and poor working conditions: manufacturing such as garments and textiles; warehouses; foodservices;

cleaning; clerical work, including office work with temporary agencies; telemarketers; retail workers; domestic workers; and home workers. A large proportion of our clients is women and visible-minority workers.

Our employment standards caseload is high. In the past year and a half we have represented over 175 clients of employment standards matters alone. We have regular contact with over 2,500 workers a year through our public education work in the city of Toronto. The predominant issues faced by these workers are unpaid wages and vacation pay, overtime, termination pay and severance pay.

Based on our extensive experience, our submission outlines typical employment standards cases taken directly from our caseload and the impact of Bill 49 on these cases.

Workers protected by the ESA are vulnerable. They need the protection of the act. They are poor or working-class. They are often not aware of the protections of the act, and even when they are aware of their rights as workers, they may not be able to attempt to enforce those rights for fear of losing their livelihood and fear of the resulting poverty and the impact on their families.

From our experiences representing workers, Bill 49 is an assault on workers' rights. When Bill 49 was introduced in May, the Minister of Labour, Elizabeth Witmer, called the legislative changes simple administration and housekeeping. It is our position that the proposed amendments will have a significant negative impact on workers' substantive rights.

As the examples I will give shortly demonstrate, Bill 49 introduces very substantial changes. Bill 49 is a gift to employers who violate the Employment Standards Act. If enacted, employers will have an opportunity to routinely violate workers' rights and get away without paying workers what they are truly owed.

In the remaining time I will highlight our objections to the changes introduced in Bill 49. I will highlight a couple of cases of ours and the impact of Bill 49 on those cases, and we'll have [the witness] speak briefly about [the witness]'s particular case and at the end I will suggest some real improvements to the act.

Bill 49 introduces six major and significant changes to the act which are directly related to the enforcement of unorganized workers' rights. These are shorter limitation periods for filing a claim; a shorter investigation period; a new \$10,000 cap on claims; a new, unannounced minimum; access to justice denied for low-income workers; and the privatization of the collection aspect.

With respect to the shorter limitation periods for filing a claim, currently workers have two years to file. Under Bill 49 this would be reduced to merely six months. Many workers stay in a job where their employment standards rights are being violated and endure great hardship just to have a job, any job. In periods of high unemployment, workers often need to be able to find a new job before they will make a claim against a former employer. They cannot risk the possible repercussions of a negative reference by an employer who has filed a claim against them. Workers need the two-year limitation period to safely file a claim. Bill 49 further pushes workers to choose between their rights and their jobs.

This is further impacted on by the shorter investigation period. The bill proposes that investigations can only go back six months of a worker's history from the time a claim is made. Where employers may have been violating the act for two years or more, they will only be accountable for the last six months of violations.

As a number of the case stories in our submissions illustrate, the \$10,000 cap on claims will have a significant impact on many of the people we represent. The minister mentioned 4% as a figure with claims over \$10,000; we find that number is much higher for our clients. Therefore, people with claims over \$10,000 literally will be giving that money to their employer.

With respect to the issue of access denied to justice for low-income workers, currently workers may pursue their statutory entitlement under the act or civil remedies in the court system. Under Bill 49, workers will be told at the start of the investigation to use either the ministry or go to court. They will have to make this decision possibly before having had the opportunity to obtain independent legal advice. Of particular note, those workers with claims over \$10,000 will be forced to go through the court system. The current government has already provided that legal aid certificates are not available for employment-related matters. This amendment will force low-income workers who are owed more than \$10,000 to pursue claims through the Employment Standards Act and forgive the balance owed to them.

With respect to private collection agencies, I would just like to highlight something that I believe has not been mentioned: that collection agencies will be empowered to push for settlement once an order has already been made. The idea that collection agencies will be able to amend an order made by the employment standards branch of the ministry undermines the authority of both the act and the Ministry of Labour.

Our brief outlines the stories of six workers with employment standards claims. The total amount owed by employers to these six workers is \$129,000. The total amount which Bill 49 would leave in the hands of employers at the expense of workers is \$84,500. The workers would actually receive only \$44,500.

Before I introduce [the witness], I would just like to tell you about two of my other clients. Mrs F is a cashier who worked in a major grocery store for 13 years, was terminated from her employment without cause and did not receive any notice of termination or termination pay in lieu of notice. She was entitled to over eight weeks of termination pay as well as severance pay. She filed an employment standards claim for approximately \$5,000, which she was awarded and received. However, this worker filed her claim approximately one year after she was terminated. Under Bill 49 her claim would not have been allowed, as a six-month time limit for filing claims would have been imposed.

Ms X was a retail sales associate who worked for a retail clothing store for approximately two years. When she notified her employer that she was pregnant and would be taking maternity leave some six months later, her employer reduced her hours, her rate of commission and drastically changed her hours and duties. She tried to negotiate with her employer to return to her regular duties

and wages. However, this was refused. The employment relationship had deteriorated to such a degree that reinstatement was not an option. She has filed an employment standards claim for compensation for the penalties imposed on her due to her intention to take maternity leave, including the loss of her job. The amount of her claim is over \$35,000. This woman, under Bill 49, would not be able to pursue her claim for more than \$10,000 or would be forced to pursue it through the courts without access to a legal aid certificate.

1100

I would now like to introduce [the witness] to talk briefly about [the witness]'s story. [The witness] immigrated to Canada from Sri Lanka approximately eight years ago. [The witness] is a Canadian citizen. [The witness] does speak English; however, for the purposes of this hearing [the witness] feels more comfortable speaking through a Tamil interpreter.

Witness (Interpretation): I came to Canada eight years ago and I have been working in a firm for the past four years. I was not even given four days' notice and I was suddenly asked to leave my job. Because I was not given enough time or notice to look for another job, I found it very difficult and at the moment I am unemployed.

Even while working there, if I wanted just to take a day off I had to give one week's notice so that I could get one day's leave the following week.

They didn't give me any time or notice and suddenly they came to me and asked me to stop work.

In the beginning I was asked to work 56 hours a week. After a year they told me, "If you want this job to be permanent and if you want to continue, you have to put in 76 hours a week." Because I wanted this job very badly, I agreed to that and I put in 76 hours a week.

Without this new law and the enforcement itself, when the employer can be so harsh to me, once this new law has been in effect, can you imagine how it is going to affect employees like me?

It's important to develop the economy. Employers should also work and employers also should pay equally the employees' work. That's all.

Ms Sax: You'll find [the witness]'s story in our submissions. [The witness]'s claim is for over \$40,000 in wages owed just for the last two years, which is the only portion of the four years [the witness] actually worked that is covered by the act presently.

To conclude, we submit that the changes proposed in Bill 49 are not merely housekeeping improvements but rather directly undermine and remove significant substantive rights for workers. We propose that in the alternative the act be amended so that it is a strong, efficient and effective piece of legislation.

We have two demands for change for a truly effective Employment Standards Act. You will find these detailed in our written submissions: first, a stronger enforcement of the law — tough, proactive enforcement of employment standards, including inspections and spot checks of company payrolls and audits; and real protection for workers against employer reprisals, including workers' anonymous complaints initiating a company audit.

Secondly, we would like to see new, improved working standards which meet the real demands of the changes in the workplace. We need stronger laws, not weaker ones. An example would be removing exemptions so that every worker is entitled to the same employment rights and protection, no matter their job or their age.

Those are our submissions. Thank you.

The Chair: Thank you, Ms Sax. Actually, I don't think any of my colleagues could ask a question in 30 seconds and ask you to do it justice, so for all intents and purposes we'll say it was 15 minutes. Thank you very much. We appreciate your coming in and telling us about your case as well.

Mr Christopherson: A point of privilege, Mr Chair: In the 15 seconds left, can I take a part of that and just say one thing?

The Chair: The rotation would have been to the government members. If the government members wish to ask a question in those few seconds, it —

Mr Christopherson: If I'd gotten the point of privilege then I would have acknowledged the courage it took for [this witness] to come here today, but since I don't have time I won't say it.

The Chair: Thank you. That's in fact what you interrupted the Chair in saying. Thank you again for coming in and making your presentation to us today.

Ms Sax: Thank you.

COMMUNIST PARTY OF CANADA (ONTARIO)

The Chair: Our next group up will be the Communist Party of Canada, Ontario branch. Is it Mr Rigby?

Mr David Rigby: Should I come up there?

The Chair: Yes, please come forward and just sit at the table there. Any of those seats at the end. Thank you for coming this morning. We have 15 minutes for your presentation, for you to divide as you see fit between a presentation or question-and-answer period. I wonder if I might get you both to introduce yourselves for the benefit of Hansard.

Mr Rigby: My name is David Rigby, of the Communist Party of Canada, and my partner is Liz Rowley, Communist Party of Canada.

Thank you for this opportunity to present our views on the proposed changes to the Employment Standards Act contained in Bill 49. Because of the profound and negative impact that these amendments will have on labour and democratic rights in the province, we begin by urging the committee to extend these hearings to ensure that all those who wish to be heard are heard and their views given due consideration before the bill proceeds further. Full public discussion and input is a requirement in any event, but it is also vital, given that this particular piece of legislation will directly affect the wages, standards and working conditions of every worker in Ontario, with the potential to impact on workers across Canada.

We are here to express our opposition to Bill 49 and to join with others in the labour movement and democratic movement who will urge its rejection in the arena of public opinion and its defeat in the Legislature. In our view, Bill 49 is not amendable. The single useful proposal to include maternity leave in the calculation of

seniority and length of employment is far outweighed by Bill 49's dangerous ballast, which is to eliminate the minimum rights and standards won by working people in struggle and then enshrined by governments in law over the course of the last 60 years. These rights and standards include collective and individual rights to a legislated minimum wage, the rights to legislated maximum hours of work per day and per week, the rights to statutory holidays and vacations with pay, the rights to refuse overtime or to work at legislated rates for fixed amounts of overtime, the rights to severance pay, all of which are negated under the new subsection 4(2), becoming negotiable "when those matters are assessed together" in a contract of employment.

1110

Long-standing legal rights to access and exercise all forms of redress deemed by a worker or workers to be collectively or individually necessary, without restriction, are sharply curtailed under the new subsections 64.3 and 64.4. These sections oblige a worker to choose between a complaint under the Employment Standards Act and a civil action in a court of law, notwithstanding that the complainant may wish to seek damages in a civil suit as well as recover lost wages or severance etc under the act and notwithstanding that the complainant may be facing financial hardship and may be thus forced by circumstance to file a complaint under the act rather than initiate a civil action, despite the fact that the new subsection 65(1) of the act will cap every payout at a maximum \$10,000, while a civil action could pay out considerably more and is completely uncapped by legislation.

Further, the new section 64.5 prohibits trade unions and any union member who is covered by a collective agreement from laying a complaint under the act against an employer who is covered by the same collective agreement. By deeming the act "enforceable against the employer...as if it were part of the collective agreement," Bill 49 makes enforcement of the act itself negotiable. In other words, the only enforcement mechanism is might and muscle, which makes the legislation itself confrontational. This will no doubt concern Moody's and others who regard fractious labour relations as a bad climate for investment.

In this respect, the proposal in the new sections 73.0.1, 73.0.2 and 73.0.3 to privatize law enforcement and contract out the ministry's collection functions is anathema to the public interest and is widely seen to be so in our view. The public expect the government to enforce the laws of the land directly through public enforcement agencies and not to hand over enforcement to private, for-profit corporations, whose main interest is the bottom line, not the public interest.

Moreover, contracting collection agencies to negotiate, for a fee, "a compromise or settlement" between employers and employees is like letting the fox loose in the hen-house. Collection agencies are employed by corporations year-round to recover moneys owed them, primarily by people who have lost their jobs or lost their income. Collecting bad debts for corporations is the daily bread of collection agencies. It is simply not credible to propose that this symbiotic relationship between corporations and collection agencies should or could be ignored

by a ministry that is charged to defend and enforce the law, most often the individual and collective rights of workers who have been cheated by employers, many of whom use these same collection agencies.

Workers' rights are also sharply curtailed under the new sections 82, 82.1 and 82.3, which reduce a worker's ability to recoup wages or other moneys owed to him or her by an employer by limiting the period of employer liability from two years to only six months prior to the laying of a complaint under the act. At the same time, the investigation time is extended to two years, with prosecution extended a further two years. In other words, workers can only claim a maximum of six months, while employers are not obliged to pay even that until four years later.

It is no surprise that employers are lauding this bill. It will go a long way to deregulate the workplace, removing many of the legal barriers that for decades have prevented employers in Canada from driving wages, working conditions and unions into the ground in the way that employers in the United States were able to do, to the detriment of living standards and labour and democratic rights, in the same period and in the absence of equivalent restraining labour legislation.

The enactment of Bill 49 would constitute a giant step in the harmonization and Americanization of Canada's employment standards laws, negatively affecting the largest proportion of unionized and non-union workers in the industrial and manufacturing sectors of the economy, including steel and auto, which is widely recognized as the engine of the Canadian economy. Workers in primary resource industries, including mining, forestry and hydro-electric, in construction, in the retail and food service sectors, in the public sector, including education, health and social services, among many others, will all be negatively affected by the harmonization and Americanization of labour laws implicit in Bill 49.

Canada will not be strengthened by ripping up our minimum wage laws. The American Sunbelt states, which have done that, are some of the poorest, most backward parts of the USA. They also have some of the highest rates of unemployment and social chaos and disorder, largely caused by the race to the bottom. The USA is no model for Canada, and levelling down is not the way to go.

The kind of improvements to the Employment Standards Act that would benefit Ontario, creating jobs and spurring consumer spending throughout Canada's industrial heartland and beyond, would include cutting the hours of work to 32 hours per week, with no loss in take-home pay; expanding statutory vacations to four weeks annually, matching the minimums in Europe already; abolishing overtime and workfare; reducing the retirement age to 60; raising the minimum wage to \$12 an hour; requiring companies to give two years' notice of layoff and to show just cause before a public tribunal in the event of shutdowns and closures, and strict enforcement by ministry staff. Together with a bill of rights for labour guaranteeing the unfettered right to strike, organize and picket, these are amendments that are urgently needed to Ontario's labour legislation.

Combined with policies to put Ontario back to work, raise living standards, redistribute wealth through tax reform based on ability to pay and, not least, redeem Canadian sovereignty and independence by withdrawing from NAFTA and the Canada-US free trade deal, these are the measures that will help Canada and Ontario to pull out of a deep economic and political crisis and into a real recovery based on job creation and security, increased purchasing power, expanded labour and democratic rights and a full employment policy that recognizes the right of every human being to a secure and meaningful job at decent rates of pay with decent standards and working conditions.

These proposals are respectfully submitted for your consideration. Thank you for your attention.

The Chair: Thank you, Mr Rigby. That leaves us one and a half minutes. Again, following the convention we've started, the questioning this time will start with the government.

1120

Mr Joseph N. Tascona (Simcoe Centre): Thank you for your presentation. I just want to address the issue of collection. The fact is that two thirds of the orders to pay that are issued against employers are never collected. That is obviously a problem with respect to maintaining the standards and rights of employees out there. What would you suggest the government can do to try to redress this problem, because it's just basically a problem of employers not willing to pay or not able to pay and disappearing? How do we address this?

Ms Elizabeth Rowley: It seems to me the problem you've identified is the same problem that we've identified: the lack of teeth in the legislation that would allow the government to pursue —

Mr Tascona: I'm looking for a solution. We've all identified the problem. What's the solution?

Ms Rowley: Strict enforcement. Not contracting out enforcement but for the government to strictly enforce.

Mr Tascona: But even if we enforce it, we're enforcing it by putting an order to pay out there. The problem is that it's not getting collected because employers, for whatever reasons, aren't there to pay it. We've enforced the act but we can't collect. What's the solution?

Ms Rowley: The solution is that if you put teeth in the legislation that would put big fines against employers that do this kind of thing, including jail terms, and if you refuse to allow them to close their operations without first settling their debts with the employees and other creditors, then you wouldn't have this problem. The problem lies with the government. In short, that's my answer.

Mr Tascona: I would say the problem is that the company may not exist and the directors out there are the ones who may have to be looked at. Would you agree that if the company doesn't exist, how can we collect, so whom should we go after if we haven't got the company to collect from?

Ms Rowley: I would suggest that other changes in labour legislation need to be made that would allow workers not to be last on the list when it comes to companies being responsible for paying their debts. Everybody is a secured creditor except employees.

Mr Tascona: That's bankruptcy law and that's in the hands of our federal friends. We don't have any responsibility for bankruptcy.

Ms Rowley: Most of the cases that are before the Employment Standards Act don't have to do with bankrupt employers; they have to do with employers who refuse to pay. You can enforce that and you should enforce, in our view.

Mr Tascona: They are being enforced. The problem is to get the money.

Ms Rowley: I thought you said that they were not enforceable, that you were unable to secure payment.

Mr Tascona: No, I didn't say that. I say they were being enforced but you can't get the money. I'm asking you for a solution.

Ms Rowley: Is this government so powerless? It seems to me that on other occasions the government has shown that it's very powerful, particularly when it comes to workers trying to express their views in this House.

Mr Tascona: We're looking for solutions. That's why you're here.

The Chair: With that, I'll have to cut this dialogue off. We're over our 15 minutes. Thank you both for coming to make a presentation before us here today. We appreciate your taking the time.

Mr Rigby: I apologize. We didn't have more than four copies of our presentation to pass out. We'll send the other copies on.

The Chair: That won't be necessary. The clerk has already photocopied them. Thank you very much.

CENTRE FOR SPANISH SPEAKING PEOPLES

The Chair: Our next group up will be the Centre for Spanish Speaking Peoples, Miss Consuelo Rubio. Good morning. There are 15 minutes for you to divide between your presentation and question-and-answer time.

Ms Consuelo Rubio: Thank you very much. I'm a community legal worker at the Centre for Spanish Speaking Peoples, which is a community organization providing services to the Spanish-speaking population in Metro Toronto and surrounding areas. We have a variety of programs for our community, including the service I provide, which is representing people who have employment-related problems. We also do a variety of educational programs with our community.

We don't have a written brief to give you today. My community has very few resources, and instead of preparing a brief with a lot of legal analyses we are endorsing a brief that will be submitted to you this afternoon by Professor Fudge. This morning I'll talk a little bit about the impact the changes will have on my community and give you some examples of people we've represented and what would happen to them if these changes were to pass.

A number of people we represent are domestic workers. Domestic workers, as you might know, are admitted to Canada without permanent resident status. They come to Canada on the condition that they will work for a number of months, and after that time has elapsed, if they have a good record, they're given permanent resident status.

The six-month limitation period to file a claim concerns us greatly. I will give you examples of two cases in which we've acted on behalf of our domestic employees, one where the domestic was unlawfully confined by the employer for 16 months. That meant she couldn't go anywhere; she couldn't contact anybody. She was 18 years old and spoke no English, and the final order for her was about \$23,000. It was paid out of the wage protection fund when the employer disappeared.

We had another domestic, as an example — and these are not exceptions; these seem to be the rule, particularly with domestics because of how vulnerable they are — where we went to the branch to get some overtime for this woman. The original claim was for \$13,000, and we ended up settling it for about \$8,000. When we went to the branch for enforcement, the branch said to us, "Oh not this guy again." So this guy does it again and again.

We have right now a man who approached us recently. He came to Canada as a refugee brought in by the Canadian government and worked in a recycling plant for one and a half years. His employer only paid overtime after 50 hours. My client is not landed yet, so he hasn't done anything about this. We figure he's owed probably close to \$20,000 in overtime.

The minister said it's only executives who have these big claims. Far be it from me to accuse her of lying to this committee, but you know she's only been the minister for one year. I've been a legal worker in this area for 17 years and I can tell you that is not my experience at all. In fact, it's a lot of these workers who wait until they have a more secure position in Canada to file these complaints whom we often file huge claims for.

The word I have heard most often this morning is "flexibility," and it really irks me, to tell you the truth, because my community has absolutely no flexibility. What flexibility did these workers I mentioned to you have in their employment? The only flexibility they have is, if they don't like it, "You leave, you go away," which is what happens.

I'm also concerned about the minimum. We don't know what it's going to be yet. Many of you in government were elected or are supporters of big law-and-order platforms. I wonder whether you're going to do the same thing with theft. Are you going to press for changes in the law so that theft charges are only laid when someone steals over \$500, over \$2,000? What's a minimum? I really feel it is important to keep in perspective that \$500, for instance, is the monthly entitlement someone who is on welfare gets, and \$500 may seem like a petty little amount to many of us, but it's not for the people we represent who have incomes. I can tell you, between \$14,000 and \$18,000 for a family of four.

I heard a number of people, particularly government members in the committee, ask questions about collection, what the government could do in terms of improving collection and actually assisting those vulnerable workers. I think I have an answer.

1130

Under the previous government, when the wage protection fund was created, we recommended that it be employer-funded and that there be experience ratings. Basically what we're saying is, let's be proactive about

it. Let's not forget that many investigations end up with employers being found in default; they haven't paid what they should. I as a taxpayer object to having to foot the bill for negligent employers, for their blatant breach of the law. I would prefer a system that is funded by them and supported by them since they're the ones who are breaching the law.

I heard the minister this morning — I'll go to her comments now — talk about how taxpayers have to pay twice because employees choose both routes, the administrative route and civil court route. That's not the way I analyse this. We have to pay twice because employers have shown a reckless disregard for the law and that is why we're paying. I'm suggesting you do something with the employers. They're the ones at fault.

What I would like to do now is make just a few comments about the minister's comments this morning. Then maybe we'll have a little time for questions. Other than her comments about flexibility, the minister mentioned that the act is very confusing, that nobody understands it etc. Again, for years we've been telling the ministry, "If you think the problem is that employers don't understand the act, why don't you have some education for the employers?" That's pretty easy. If it's ignorance only, that can be solved. We have education for our community. Let me tell you that when I say "we," I mean "I," because I'm the one dealing with this problem. We don't have a lot of resources and still manage to disseminate some information and answer some questions.

The minister also talked a little about certain administrative procedures and how the two-year limitation period is too cumbersome since 9% of all claims are filed within six months. But that leaves 91% that are not. If that is the way the ministry is going to streamline the process, I have a big problem with that.

The minister also said that the two-year period is being reduced to six months because witnesses are not as reliable if you wait too long. In the 17 years I've been involved with employment standards, most of the cases were resolved by looking at records. Very few times do you have to resort to witnesses. Employers are required by law to keep records. That is what the employment standards officer is going to be looking at when investigating a claim.

I just want to reiterate, before I end my remarks and wait for your questions, the impact this is going to have on our community that is very new in Canada, that has very few financial resources and that I think is second on the list of incomes in terms of poverty and resources. Many of you who come from the faith community, like Mr Shea, who's actually my rep, should really show some more concern about the most vulnerable in our society. I don't want to hear more about, "We care about the most vulnerable." I want to see some action from this government if they really mean it and are not trying to sell us another bag of goods that many of us aren't buying. Those are my remarks.

The Chair: Thank you. That leaves us five minutes, so we'll divide that between two parties.

Mr Pat Hoy (Essex-Kent): I enjoyed listening to your presentation. I was particularly interested in the claim amount that you talked about of \$23,000. I was going to

ask you some questions about that but you answered them for me as you went on. This person is not an executive at all. Would they be earning under \$10 an hour?

Ms Rubio: No. We calculated that this money was based on the minimum wage. I don't think it was \$6.85 at the time; it was less than \$6.85. That was about a year and a half ago. This was considering overtime, and this woman literally worked day and night for her employers. The employers ran a restaurant, and she was also taken to the restaurant and brought home at 1:30, 2 in the morning. She had to get up at 6 to get the kids ready for school and so on. They didn't pay her a penny for the 16 months. They told her they were sending the money back home, but they weren't. She was a domestic, basically.

Mr Hoy: Would it be difficult for this person to pursue this through the courts with the resources that they have?

Ms Rubio: This is something I didn't touch. I mentioned that most families with four members have incomes of between \$14,000 and \$18,000. You can really appreciate that people do not have any pennies for frills like litigation. Doing it cheaply, we're talking \$200 an hour for any lawyer. It's unrealistic to expect that these people will have the resources and energy to take this thing through the courts. It's just sweeping them out of sight, basically, if you expect people to pursue civil remedies for employment standards claims.

Mr Christopherson: Thank you for your presentation. I'm particularly pleased that you're here on the opening day. In my own community, the riding of Hamilton Centre, one of the fastest-growing populations in downtown Hamilton is Spanish-speaking. We in the NDP have suggested, not only with this legislation but in virtually everything this government has done, that the most vulnerable, those who are either in poverty or close to poverty in many cases — visible minorities, new Canadians, women — are affected the most. I suggest to government members that what they're hearing today and will hear over the next three weeks is further evidence that this is the case. To give you the benefit of the doubt, if it's just that you didn't know, then you're hearing from people who represent the very Ontarians we've been talking on behalf of.

I was struck by the fact that you said you've been doing this for 17 years. I suggest then that you're very well placed to give expert testimony as to whether or not this is just minor housekeeping, which the government is suggesting.

Ms Rubio: No, this is not minor housekeeping. I've read the bill in some detail and I can tell you that particularly the six-month limitation period is a major, huge change that will affect a lot of people. Most people, in my community at least, the community I can speak with more authority about, wait before making the decision. There are a number of considerations. In my community a lot of people have come to Canada as refugees from oppressive countries and they have a certain fear of the government, which I must say I've seen reinforced in the last few months. I get a lot of calls from people who have problems at work. I see more and more reluctance

to enforce their rights. That is something that concerns me greatly.

We've had some experience with collection agencies at the federal level, and I'm not impressed. All they want is a deal and out of sight, out of mind. "If I close this file I get some payment." That's really our concern. This is again talking about what kind of power the people in my community actually have to negotiate and bargain with these guys who will say: "Okay, take 200 bucks and run. You can get them right now." These people are making very little money. That is of great concern to us. This isn't minor housekeeping.

Mr Baird: On a point of order, Mr Chair: It was suggested that the Minister of Labour lied to the committee, saying that all individual claims that exceed \$10,000 involve executive positions. What she said was "often." I think that should be reflected in Hansard. She did not say "all" under any circumstances. She said "often," not "all," because certainly we know that not to be the case.

Ms Rubio: I actually said, "Far be it from me to suggest that she was lying."

1140

Mr Baird: That's fine, but your intent was clear. Your intent was very clear.

Ms Rubio: No, but that's not what I said.

The Chair: Okay, thank you. Mr Baird, you've clarified it for the record.

Ms Rubio: And it's too bad she didn't stay. She claims she wants to hear what we have to say. Well, we've requested meetings with her. We haven't heard from her. She's not here this morning. So she says one thing and does something else.

The Chair: Thank you, Ms Rubio, for taking the time to make your presentation here this morning. We appreciate it.

Ms Rubio: Thank you.

UNITED STEELWORKERS OF AMERICA, DISTRICT 6

The Chair: Our next presenters, they haven't introduced themselves. The Vaughan Chamber of Commerce is not here. So the United Steelworkers of America, District 6. Good morning, folks. I take it you're Mr Hynd. We have 15 minutes for you to use as you see fit, divided between a presentation and question-and-answer period. We appreciate you coming to see us here this morning.

Mr Henry Hynd: Thank you for the 15 minutes, which is, quite frankly, a very short time to really have an analysis of these small housekeeping amendments that in fact will create a great deal of concern and injustice in our province of Ontario. My brief outlines something about my union, the size and the diversity of our membership, but that can be read at any time.

I would like to begin, and I will only touch on several parts of my brief and hope that the committee members will take time to read it. We feel that it points out many of the legal implications of this bill.

We believe that Bill 49 will seriously jeopardize the rights of workers to basic employment protection in Ontario. Premier Harris and Labour Minister Elizabeth

Witmer have publicly proclaimed Bill 49 amendments to be "minor changes" which amount to mere "housekeeping." That is so sad, that the government of the day would consider this to be housekeeping if they really analysed the implications of this bill.

This bill will strip unionized workers of legislated minimum workplace standards which resulted from hard fought struggles of the Steelworkers as well as many other trade unions, and privatizing the government's responsibility for arbitrating, regulating and enforcing minimum workplace standards, thereby placing this burden on the backs of workers.

These amendments will make it easier for employers to deny their employees the minimum wages and benefits set out in the Employment Standards Act. More simply put, Bill 49 is a gift to unscrupulous Ontario employers who will view the amendments as an opportunity to gut minimum workplace standards. Employers will realize that the costs and pressures of self-regulation of this new system will force employees to agree to a settlement or compromise of an outstanding claim against the employer even where the employer has clearly and unconscionably violated this act.

The United Steelworkers asks this government to consider the effects of Bill 49 on working people and the labour relations environment in this province. We urge this government to have regard to the implications of Bill 49 and withdraw this proposed legislation.

Section 3 of the bill allows employers to negotiate lower standards for hours of work, overtime pay, public holidays and paid vacation in organized workplaces. Until now these basic standards were untouchable. Furthermore, no other jurisdiction in Canada allows employers to contract out of legislated minimum standards protections afforded to workers. This amendment is enough to make the USWA stand in opposition to the bill as a whole.

The intent of the act has always been to impose minimum workplace rules and standards which society deems necessary for all of its members. While parties are free to contract for higher benefits than those contained in the legislation, they are not able to undercut the statutory minima, often referred to as the floor of rights. This amendment will eliminate the floor. There is no justification for the elimination of basic standards for working people in a society which values the universality of at least minimum basic rights.

We believe that the introduction of this legislation will create greater conflicts in the workplace where in fact employees are fortunate enough to have a union that will help them carry through to ensure that employers pay the minimum standards and whatever is due employees, whatever wages have been denied to employees, vacation pay, whatever, and this is something that we feel is an onus on unions that need not be there. It will create heightened tensions in the workplace and certainly won't be a conducive element to adding any harmony in the workplace.

The proposed amendment requires unions, employers and arbitrators to undertake the difficult task of comparing apples and oranges and determining whether collective agreements comply with subsection 4(3) of the amended act and provides greater rights in total for hours

of work, overtime pay, public holidays, vacation with pay and severance pay when assessed together. This accounting mess is compounded as the parties are being asked to value and compare purely monetary rights (overtime pay, severance pay), non-monetary rights (hours of work) and mixed rights (vacation pay and public holidays).

The fact that there has been no attempt in Bill 49 to address how a negotiated package is to be evaluated suggests that the purpose of this provision is to allow employers to waive minimum standards rather than negotiate greater flexibility in achieving minimum standards.

This government is abdicating the historic function of government in enforcing the act and forcing it on the shoulders of organized labour. Bill 49 eliminates recourse by workers to the considerable investigative and enforcement powers of the Ministry of Labour. Bill 49 contemplates that an arbitrator, whose costs will be shared by the union and the employer, will have all the powers now exercised by employment standards officers, referees and adjudicators. This places an undue hardship, a financial hardship, a legal hardship, on human resources' burden of managing every employment standards complaint. We consider this as staggering.

The change from an individual to a union-driven procedure poses a tremendous hardship on unions, which will now bear the burden of investigation and enforcement and their accompanying costs. As well, Bill 49 will require unions to become familiar with the pre-existing and complex jurisprudence under the act, because unions and not individual complainants will be responsible for determining whether to proceed with a complaint.

There is also some ambiguity about when unions will first begin to assume responsibility for administering employment standards complaints. As the proposed legislation presently stands, a union is responsible for enforcing the act after certification and the issuance of notice to bargain a first collective agreement if an employer subsequently enters into a collective agreement. How is it possible for the union, without a collective agreement grievance procedure and arbitration provision in place, to process an employment standards complaint?

It is possible that these complaints will need to be held in abeyance until a first collective agreement is achieved. If a first collective agreement is never achieved and complaints that had been held in abeyance are subsequently referred to the employment standards branch, the delay in filing the complaint with the branch may result in an employee being unable to recover money due to the proposed six-month limitation period for filing complaints.

The government's minor changes to the act allow it to unfairly pass off the obligation and associated liability involved with administering a public statute on to employees and their unions when it is the employers who have violated its provisions.

The absence of an investigation stage will be extremely problematic in dealing with successor employer and common employer complaints under the act where pre-hearing production is essential. The information necessary to succeed on such a claim is often solely within the knowledge of the employer. Unions will be forced to file

and then proceed to litigate these complaints before an arbitrator in order to compel production and disclosure. Disclosure at this stage may result in the union finding that there was little basis for the complaint. Surely it makes sense for the employer who has violated the law to provide the necessary materials to the union, and yet we will be forced to go to arbitration to receive this.

1150

Bill 49 is a bad act for all workers, and especially for unorganized workers in terms of its limitations, the time limits that are imposed on workers who may have few resources, little knowledge, little access to information. What will really grow as a result of this in the unorganized field is the number of people who will become complainants, and they will take cases forward in the private sector and make claims for employees and look for a settlement of the claim, because a settlement of the claim will usually result in their payment. They won't pursue the claim in the same way that any justified system would proceed. How they will proceed is on the basis of receiving some of their money, and therefore this ensures that unorganized workers will never, ever be able to collect what is due them under the law.

This is a sad comment on this government and its housecleaning. This will cause major problems in the workplace. Most unorganized workers will just be denied justice. This is an attempt, in my view, to allow unscrupulous employers to get off the hook, not to pay moneys that workers are entitled to, and I can't understand how any government would consider this to be mere house-keeping changes.

I ask you to look at this brief in detail, as I said at the beginning. It points out some of the legal implications for both organized and unorganized workers and the heavy burden it will place on workers and their representatives to pursue what should be their right under law.

The Chair: Thank you. That leaves us with just under two and a half minutes, so there'll be only one question in the rotation this time. A government question, Mr O'Toole.

Mr John O'Toole (Durham East): Thank you, Mr Hynd. Just a quick question. I hear from my constituents who have concerns with the employment standards that the current system, although there may be judgements, doesn't work. That's a pretty broad statement. Without particular reference to this, do you think it's time to review the legislation?

Mr Hynd: I can only tell you, Mr O'Toole, that in our experience we have been able to bring justice to workers even although it has taken some considerable time. We have judgements against employers who have decided to run away from their employees and from their obligations to their employees, who have virtually stolen money from their employees, and we've ensured that these employees have received that money. I can only say to you that the employment standards branch was a very effective tool for workers. I can't imagine the difficulty that unorganized workers would have without the help of the employment standards branch. I can only say to you that the new system may be very expedient. What will happen is nobody will make a claim or claims will be settled fast for 10 cents on the buck, and workers will be denied

what they really should get. Employers who are stealing money from employees are being let off the hook by this system, by the introduction of these so-called house-keeping changes.

Mr O'Toole: I guess I would suggest, in any changes that may be necessary, do you endorse the idea of more self-reliance, specifically in collective bargaining where there is a prevailing, negotiated-between-the-parties —

Mr Hynd: Actually, there is a very simple way for this government to expedite claims. If the government really wished to bring about speedy justice, all it has to do is move workers — who have worked for their money and have been denied payment — to the top of the list instead of the banks and the rest of the creditors. Workers are at the end of the list. They have actually put in physical labour and they are owed the money. The owner has taken that money away from them, money they were entitled to. The banks and creditors, when they make loans, make them taking a risk. They're investing in a business. Workers don't invest in a business; they work for their employer. So if you want an expeditious system, there's a simple solution. And it's not a simple house-keeping matter. We'd still need employment standards and we'd need the branch.

Mr O'Toole: I repeat the same question: Do you believe that amendments of that magnitude need to be discussed and that the minister is doing the right thing by giving you and others, and us, the opportunity to listen and to amend the act so that it addresses those vulnerable workers?

Mr Hynd: For the minister to take away minimum rights —

Mr O'Toole: She isn't, though.

Mr Hynd: I think she is. What the minister is doing is denying the fact that minimum rights should be protected by government. What they're saying is they expect the employers to self-police, and we know how many employers self-police. There's a litany of employers who have denied employees their wages that they have already worked for, their vacation pay that they have already earned, their severance pay that they paid for. Their employer denies them that. I can only say to you that that's certainly no way to straighten things out for employees. That's not housekeeping; that's a destruction of the minimum standards in this province.

The Chair: Thank you, Mr O'Toole. I'm afraid we've exceeded our time. Thank you both for coming before us here this morning. We appreciate your taking the time to make your submission.

That concludes our morning session. The committee stands recessed until 1:15 this afternoon back in this room.

The committee recessed from 1158 to 1315.

CANADIAN AUTO WORKERS — CANADA

The Chair: I call the meeting back to order for our afternoon session. Our first group making a presentation this afternoon will be the Canadian Auto Workers. Good afternoon, gentlemen. I wonder if you might introduce yourself for Hansard, and of course, just to remind everyone, we have 15 minutes for each group today and

it's up to you to divide as you see fit between presentation time and question and answer.

Mr Jim O'Neil: My name is Jim O'Neil. I'm the national secretary-treasurer of the CAW. On my far right is Jim Stanford, who is an economist with the CAW, and Lewis Gotthel, who is the director of our legal department.

For those who don't know about our union, we are the largest private sector union in the country. We represent some 210,000 members — 143,000 are here in Ontario — in a broad range of different services and industries. As you notice, we have a brief submission that's before you, but I'm going to go from the one page highlighting some of the issues within that brief and I would hope that at a later date you would go through the brief as it's been put together.

While the CAW — Canada welcomes the opportunity to appear before the committee to address our very serious concerns about Bill 49, we underline our clear opposition to the manner in which the current provincial government continues its regressive rewrite of labour laws such as the Employment Standards Act without consulting the trade unions and workers of Ontario. Providing a very limited number of persons and/or organizations 15 or 20 minutes to debate the purported merits of another attack on workers' rights is unacceptable and a shameful mockery of the democratic process.

The brief of the CAW — Canada submits:

The strong opposition of Canada's largest and leading private sector trade union to Bill 49;

That all workers in Ontario have an interest in improving, not diminishing, the workplace standards found in the Employment Standards Act by reducing the acceptable work week to a maximum of 40 hours, increasing minimum vacations with pay, the minimum hourly wage and intensifying the prosecution of delinquent employers;

That Bill 49 seriously limits and in some circumstances denies worker access to justice and the proper enforcement of the standards in the statute by imposing a minimum floor and maximum ceiling for an acceptable claim to the Ministry of Labour, reducing the time period during which a worker may make a claim to six months, and privatizing the collection of outstanding wages in a way which will coerce workers to take less than 100 cents on the dollar with respect to their minimum legal entitlement;

That Bill 49 privatizes for a third of Ontario's workforce the entire administration and enforcement of the Employment Standards Act and makes workers pay half of the cost of the arbitrator who will hear claims under the Employment Standards Act. Corporations don't have to pay for a judge's time when a case pursuant to the Ontario Business Corporations Act is heard in the Ontario Court. Why should workers or unions have to pay the cost with respect to an arbitrator's time regarding a claim under a public statute like the Employment Standards Act?

It is and has been widely recognized that the purpose and intent of the Employment Standards Act is to protect workers who are in a radically unequal bargaining position in relation to their employers. Workers are not calling for the amendments found in Bill 49. The only

voice supporting these changes is the voice of corporate Ontario, and one thing is certain about their agenda: It is not about the protection of workers and their communities.

With that, I'll turn it over to Lewis Gottheil for some comments.

Mr Lewis Gottheil: The brief goes into some detail with respect to the points listed here and I would ask you to consider that brief carefully. We're particularly concerned at this time about the proposals in the bill that deal with a minimum floor and maximum ceiling with respect to claims.

With respect to a minimum floor, as we state in the brief, if the bill passes as proposed, workers will be disinclined, discouraged and even intimidated in a sense from pursuing their claims, the reason being that the only forum they will have to pursue a claim under the minimum floor is the Small Claims Court of Ontario. In our view, it would simply be counter-productive for the worker involved, for the community at large, to oblige workers to go to the Small Claims Court to pursue a claim that falls under the minimum floor. You will be using up Small Claims Court time, which is also funded by the taxpayers of Ontario. You'll be forcing workers to engage in procedures which are technical and with which many workers, particularly vulnerable workers with unfortunately limited educational opportunities, are simply not familiar with. They will be discouraged, if not intimidated, from using that procedure. It's simply counter-productive and we, as we state in the brief, see no savings to the public purse in that respect.

With respect to claims over the maximum ceiling, which we understand is proposed in the amount of \$10,000, the first point I would make in that regard is that many workers, including many members of the CAW, will have down the road, and have had in the past, claims in excess of \$10,000.

So while you may think, while considering this bill, that you're not affecting a great number of workers, if that proposal passes, you will affect a great number of workers. For example, members of our union will make \$400, \$500 a week, will have between 10 and 20 years of service when a plant closes. If you include in that severance pay calculation vacation pay owing, quite soon you'll find you're over the \$10,000 mark. It's simply unacceptable in our submission that one would force an individual worker, again, to engage in court proceedings to recover that which is guaranteed by the Employment Standards Act.

The purpose of the act is to protect workers. Historically, governments of all stripes have recognized that purpose. Furthermore, the purpose of the act is to give a worker a simple means of recovering his or her entitlement. That's been a purpose of the act for many years and should remain a purpose of the act. As well, the act has recognized that workers, particularly vulnerable workers, either by way of limited educational opportunity or by way of not having English as their first language, and any other worker, should have the assistance of the Ministry of Labour in pursuing a claim. That's why including all claims of whatever amount of money, all entitlements for whatever amount of money, should be

handled within the Ministry of Labour enforcement procedures and framework. Employment standards officers have the power to inspect documents, interview witnesses, collect the information to assert a claim, and the workers of Ontario rely on that procedure to assist them in getting their entitlement.

So while we understand the minister this morning announced a withdrawal of the provision regarding contracting out of workplace standards, we are not confident and we are not assured that this government won't introduce that again. We take from the minister's withdrawal a decision that the government will not proceed with that particular proposal down the road and we trust that the government will make that clear in the days to come, that that's what the withdrawal of that particular proposal means.

There are unfortunately so many other ramifications dealing with other issues pertaining to, for example, the collection proposals, privatizing collections etc. Regrettably, we have a limited amount of time and it really is an unfortunate and wrong decision of the government to limit our time because of the enormous impact this has on workers, not only in organized industries but in unorganized industries.

I'll stop there because we hope you may have some questions that we can answer with respect to your concerns.

The Chair: Thank you, gentlemen. We do indeed have two and a half minutes per caucus, and questioning will start with the official opposition.

Mr Duncan: The notion that this is the first step towards a right-to-work jurisdiction, would you concur and would that be your overall view, that this is a slippery slope in terms of where we go as a province in terms of workplace regulation?

Mr O'Neil: The Employment Standards Act didn't evolve overnight. It evolved over issues that workers and unions believed were something that had to be put in place to make the improvements. For the minister now to say she's going to take one section out and review it, I would suggest that the whole Employment Standards Act is so important, it all should be reviewed and these hearings should stop immediately. There is no question in my mind that what this government's driving for is lower standards for workers.

Mr Duncan: That was my next question. You would not be opposed to a complete review of the act itself, provided there was fair opportunity to debate it publicly?

Mr O'Neil: We're not opposed to debating any issue, if there's fair debate and there's some kind of a forum where you can — again, the Employment Standards Act is the minimum where you can improve workers' rights and working conditions within this province.

Mr Gottheil: If I might add one brief point to that. In our brief we make reference to a case decided by the Supreme Court of Canada, called *Machtinger* and *HOJ Industries*, and it's in there to say one particular point: that there's been a consensus in the community and a consensus reflected in the Supreme Court of Canada that the purpose and intent and spirit of the Employment Standards Act of Ontario has been to protect workers, to advance those who are in a vulnerable bargaining posi-

tion. So, yes, we would encourage a review of the act with respect to updating the act, improving the act, dealing with issues such as teleworkers, workers who are forced to work at home, dealing with issues pertaining to hours of work and the increased polarization of hours, those working too much overtime, those who don't have any work.

Mr Duncan: To make sure I understood you, you would prefer that these hearings cease and that we wait until we have a more complete understanding of what the government's entire agenda is before we have public hearings?

Mr O'Neil: Again, as Lewis just said and I repeat it, if you're going to have hearings and the government is going to say to us they want to review it, then they should review it, not ram it down our throats.

Mr Christopherson: Thank you very much for the presentation. A couple of questions: One is, at the outset of Bill 49 being dropped on the floor of the Legislature, the government characterized these changes as minor housekeeping. Do you agree with the minister that's what this is, and if not, why not?

Mr O'Neil: No, I don't agree that they're minor housekeeping. I haven't seen anything that's been dropped that is looking at making improvements towards the workers' rights and vacations and pay or anything else. It just seems to me that they're going in the opposite direction.

Mr Gottheil: And it can't be qualified as minor housekeeping when you in effect, as we say in the brief, privatize the enforcement of a public statute by putting the entire load and cost burden on trade unions. It can't be qualified as minor housekeeping when the government reveals an intent to have a minimum floor and a maximum ceiling with respect to access to the public enforcement of a very crucial statute. These are not minor housekeeping issues. These are justice issues and workers are being denied access to justice in an important way.

Mr Christopherson: One last question. The minister announced this morning the withdrawal out of 49 of the flexible standards portion. We know that this government, both now and when they were in opposition, believes that trade unions only represent a very small part of the workforce and have a very narrow interest only in themselves and they constantly project that image when they speak about the labour movement.

I'd like to ask you very directly, as I did Gord Wilson this morning: What is your intent vis-à-vis Bill 49 in terms of your seeing this as an important issue and what you plan to do about it, even though arguably the largest piece that affects organized labour has been set aside for the time being? How do you see the rest of this in terms of a justice issue?

Mr O'Neil: It's not a justice issue — I mean, there's no question. We're in bargaining right now that'll have a major impact on this province and if anybody doesn't understand that, they don't understand the importance of GM, Ford and Chrysler to not only Ontario but to this country. We're not going to leave the bargaining table until we fix within the agreement what this government is trying to take away. Whether it's the Employment Standards Act, whether it's changes to the health and

safety legislation, we are going to fix it at the bargaining table. That's going to, I suggest to you, wreak havoc within this province. If that means a strike with GM, Ford or Chrysler until we get what we believe is at least the minimum that we have, we're not walking away from the bargaining table. So it's going to create havoc and that's with the big employers. With the smaller employers, it'll be much tougher, but that same fight's going to go on.

Mr Jerry J. Ouellette (Oshawa): Just one quick question before I pass it off to Mr Shea. Thank you for your presentation. I'm a little bit confused in that your summary, the second bullet there, states that you want a 40-hour work week maximum. Yet constituents who come into my office from Local 222 tell me that you had bargained for a 48-hour work week and the reason they're coming in now is they're concerned that you're currently going to be bargaining for a 56-hour work week. I wonder if you might be able to explain this. First of all, is it true? I haven't seen your contract, so I don't know. You negotiated for a 48-hour work week during your last negotiations?

Mr O'Neil: No, 48 hours is a requirement under the Employment Standards Act. Then the employers we bargain with use 48 hours as the yardstick.

1330

Mr Ouellette: Okay. And then the 56, there's no truth to the 56 at all.

Mr O'Neil: Fifty-six what?

Mr Ouellette: A 56-hour workweek.

Mr O'Neil: If you give GM the right, the corporation the right, they want the right to unlimited overtime. It's not coming from the workers; it's coming from the corporations that are lobbying this government to increase 48 to 52 to 56.

Mr Ouellette: But this is something that you have the ability to bargain for, the number of hours you're able to work within the plants?

Mr O'Neil: We have the right to bargain, but if you know GM, if people are coming into your workplace and those are your constituents, you know how tough GM is going to be on the issue. We're not going away from 48 hours. You can be assured of that.

Mr Derwyn Shea (High Park-Swansea): Before I pass this over to Mr Tascona, just a quick question which picks up on a question raised earlier this morning by another member of the committee. It deals with the issue of bankruptcy and the protection of employee rights and so forth. In the last several years, at least, has the auto workers' union done any deputization with the federal government in terms of the Bankruptcy Act?

Mr O'Neil: Yes, I believe it was when the federal government under Mr Mulroney was taking a look at the revisions to the Bankruptcy Act, which ultimately occurred, that the union made very strong representations with respect to a fund or program akin to what the NDP passed in Bill 70. That was a way of satisfying first, among a variety of listed persons, unpaid claims, be it in terms of severance, termination or otherwise. Unfortunately the Progressive Conservative government at that time didn't see fit to pass what would have been a very progressive and forward-looking amendment, and the

workers were left out in the cold. It took the NDP government to pass that bill. Unfortunately this government has seen fit to leave workers out in the cold by gutting that program under Bill 70.

Mr Shea: Instead of mixing up levels of government, could you perhaps just carry on? Since the change of federal government, what has happened with the current federal government to redress what you would perceive as grievances?

Mr O'Neil: My understanding is that revisions to the Bankruptcy and Insolvency Act are not at the top of the federal government's agenda right now.

Mr Shea: Not even yet?

Mr O'Neil: We don't have any active efforts right now in making representations to the government. If it appears that bill will be on the agenda we'll certainly be there pushing the issue for workers.

Mr Shea: So you've made no effort to have it changed in the last four years?

Mr O'Neil: We continue to present our views with respect to the need for a program to help workers. The first place to go, however, is under provincial jurisdiction. We've made our views very clear on Bill 70 and the revisions to Bill 70. That's the first place. The backup place is to the federal government, and we've made our views very clear on that. The thing is, the federal government hasn't put forward a bill in the last little while dealing with that issue so that we can concretely grab a hold of a proposed statute and work with it.

The Chair: I'm afraid we've exceeded our time. Thank you, gentlemen. We appreciate your taking the time to come before us this afternoon and make your presentation.

ALLIANCE OF MANUFACTURERS AND EXPORTERS CANADA, ONTARIO DIVISION

The Chair: Our next group up is the Alliance of Manufacturers and Exporters Canada. Good afternoon. We have 15 minutes for you to use as you see fit, divided between presentation, questions and answers. I wonder if you might introduce yourselves for Hansard.

Mr Ian Howcroft: Sure, glad to. My name is Ian Howcroft and I'm director of human resources policy with the Alliance of Manufacturers and Exporters Canada, Ontario division. With me this afternoon is Susan Houston. Susan is manager, employment issues, with Dow Chemical and a long-standing member of our human resources committee. We appreciate the opportunity to provide our comments and recommendations on Bill 49, the Employment Standards Improvement Act, to the standing committee.

Before we provide substantive comments with regard to Bill 49, I'd like to highlight a few aspects about the alliance. The Alliance of Manufacturers and Exporters Canada was created earlier this year between a merger of the Canadian Manufacturers' Association and the Canadian Exporters' Association. We are a national voluntary organization and we have offices in all provinces. The alliance's member companies produce approximately 75% of Ontario's and Canada's manufactured output. Exports

and manufacturing have driven economic growth in Canada over the last four years. Manufacturing directly accounts for 18.5% of the country's GDP. If one takes into account the indirect contribution to economic activity, the value generated by manufacturers and our suppliers is about 55% of the GDP. The value of our national exports amounts to more than 40% of GDP. These figures clearly indicate the clout and importance our members have in the economy of both Ontario and Canada.

In today's global marketplace the government must do all it can to ensure that Ontario is as competitive as possible. We must all work towards cutting costs, removing inefficiencies and creating an environment that allows our economy to grow in order to promote and support our social programs.

The alliance has been, and currently is, supportive of this government's direction and its efforts to reduce overall regulatory burdens in order to create that competitive environment that will attract investment and ultimately lead to job growth.

Consequently we support the direction of Bill 49. This bill recognizes that the role, functions and activities of government must change and take into account current economic realities. Bill 49 reduces the role of government while at the same time it protects the rights and interests of those who need the services of the employment practices branch. Overall, Bill 49 will allow the government to more effectively utilize its limited resources.

We are very pleased that the government has recognized that broader reform and a more fulsome review of the Employment Standards Act is necessary. Our members have long dealt with the problems, frustrations and waste of resources that result from the current Employment Standards Act. We therefore look forward to participating in the phase 2 review of the act which we expect will commence this fall. Bill 49 is a positive first step, but it is only a first step.

The current Employment Standards Act is extremely rigid and affords neither employers nor employees the necessary flexibility. While intended to set basic standards, the Employment Standards Act is often a disincentive to attracting investment. There is a need to reduce the onerous regulatory burdens that exist within the current act. To illustrate this, I would cite the complicated and onerous permit system that pertains to hours of work and overtime. It's clear that the current system is in need of dramatic change and reform. The current act does not take the realities of an evolving workplace into account.

There are very few people within the Ministry of Labour who understand the complete permit system and who would be able to explain it with any degree of confidence or competence. It's little wonder that the majority of employers and employees are unsure as to the specifics of the hours-of-work and overtime permit system. It would therefore be advantageous to Ontario's competitive position if the archaic, cumbersome and arcane permit system was removed. There is a great need and a great opportunity to simplify and improve the system. It is time for the Employment Standards Act and the regulations to be significantly amended to make them more relevant to today's workplace. The alliance will be

providing the government ongoing input into how to positively improve our employment standards and the other workplace legislation and regulatory systems. We have provided more detail to this point in our appendix to the written submission.

At this point I'd like to provide some specific comments on the substantive aspects of Bill 49. While we are supportive of the overall direction and intent of the act, we will highlight some of our concerns and recommend that some changes be made.

The alliance supports the changes that will simplify some of the administrative aspects of the Employment Standards Act. For example, we support changes that would allow service by regular mail and those that would allow for the electronic filing of claims. In fact, we would like to have seen another administrative change included in this bill that would allow for wages to be paid or transferred by way of direct deposit into an employee's bank account. Section 7 of the current Employment Standards Act requires that an employer pay wages to an employee in cash or by cheque. The act should be amended to reflect the reality that a great number of employees receive their wages this way.

We also support the decision to use private collection agencies to pursue moneys that are due under the Employment Standards Act. Collection agencies are in the business of collecting unpaid moneys, whereas this is not a core business of the government. We support letting a private organization do what it can do better than government. Let the government do what it can do best.

We are also pleased to see that the government has taken a positive first step in reducing the possibility of a multiplicity of proceedings or duplicate proceedings taking place on the same issue or facts. Consequently, we support the proposed section that will require an individual to select whether he or she proceeds under the Employment Standards Act. It is unfair for an employer to face an employment standards claim and then face a civil action on the same facts. Also, this will reduce the number of complaints the employment practices branch has to deal with, thereby freeing up its limited resources.

On a related topic, we also support the \$10,000 cap or limit on the amount that an employment standards officer can award. It is our understanding that very few claims exceed \$10,000. Those that do exceed \$10,000 require or involve an inordinate amount of the employment practices branch resource time. Again, this will allow for the most effective use of their limited resources. We also note that until 1991 there was a cap of \$4,000 within the Employment Standards Act, excluding severance pay.

At this point I'd like to ask Susan Houston to provide some additional comments.

1340

Ms Susan Houston: As was stated above, the alliance supports the government's direction and that of Bill 49 to increase flexibility and promote self-reliance. We do, however, have some concerns with the practical implementation of section 3 of the bill. We're pleased to hear that this morning it's been announced this will be deferred until the full review of the act. We want to emphasize our support for increasing flexibility. However, we feel this aspect can best be addressed within the

context of the overall review of the Employment Standards Act. This will allow more time to ensure that all dimensions of this issue have been fully canvassed and addressed. It's quite a complex issue.

The alliance would also like to raise some questions and concerns with respect to section 20 of Bill 49. While this section encourages and promotes self-reliance, we note that there could be unintended results without changes to this area. For example, we have concerns that an arbitrator, under this provision of the Employment Standards Act, could have greater powers than an arbitrator would have traditionally to apply and interpret legislation. These powers are broader than they need to be to ensure that the requirements of the act are available to those covered by collective agreements. It should be clear in the legislation that an arbitrator has no investigative powers. He or she could only have the ability to apply the Employment Standards Act provisions and adjudicate the complaint.

Furthermore, we have concerns with regard to how an arbitrator's decision would or could be appealed and as to the standard that would be necessary in order to allow an appeal. Under arbitral jurisprudence, the decision must be appealed by way of judicial review and the standard to successfully overturn a decision requires the decision be "patently unreasonable." The judicial review process is extremely expensive and the burden is extremely onerous to meet. It may be beneficial if there were some other more accessible and affordable appeal mechanism in place for these situations. Also, the decision should be one of correctness. The standard should not be that the decision is "patently unreasonable."

It's also important to ensure that this section does not result in abuses of the act or uses of the act to pursue other agendas. Arbitrators should only be allowed to deal with substantive standards such as vacation pay, public holidays, termination pay, severance pay, pregnancy or parental leaves, minimum wage, hours of work and overtime. Excluded from this section should be such things as benefit plans, sale of a business, related employers and policy issues, as these add a dimension or complexity that could lead to unexpected results. If limits are not provided for, this section could be used to further a bargaining agenda which is not the intent of the Employment Standards Act. Consequently, we strongly recommend that changes be made in this area.

The alliance supports the changes with regard to the general time limits. We concur that the two-year time limit is too long, and a six-month limit would be a great improvement. It will allow the employment practices branch to deal expeditiously with claims filed in a timely manner, again allowing it to better focus its limited resources. We note the director will maintain discretion to extend time limits in cases where necessary conditions and circumstances warrant an extension.

We also support the extension of the time limit to apply for a review from 15 to 45 days. However, we're concerned with the limited discretion that would be afforded the director in these cases. We suggest that the director be given wider discretion, similar to that which currently exists, ie, special conditions. There have been cases involving large sums of money where it has been

advantageous to allow the parties to negotiate and hopefully resolve the issue on their own. The negotiations continued with the knowledge that if they were unsuccessful, the director could use his or her discretion to extend the time. This reduced discretion may force one of the parties to quickly apply for a review, which would negatively impact the ongoing negotiations.

To summarize, the alliance supports the direction and intent of Bill 49. We feel that Bill 49 will remove some of the regulatory and administrative problems from the current Employments Standards Act. It recognizes that with declining resources the government must do all it can to effectively handle claims and ensure that those who most need the services of the employment practices branch receive that assistance. Bill 49 will allow for such allocation of resources by removing aspects that can be better dealt with in other ways. While we fully support the intent of increasing flexibility and promoting self-reliance, we feel that the provisions dealing with the greater right or benefit aspects are best deferred for full review. Bill 49 is a good first step.

This concludes the formal presentation, and we'd be pleased to answer any questions you might have.

The Chair: Thank you very much. We have just over two minutes per caucus each. We'll start with the official opposition.

Mr Duncan: Thank you for your presentation. Just one question. The minister has withdrawn section 3 of the bill, probably one of the more controversial parts of the bill, and you have indicated that you have a number of concerns that you would like to see addressed and other things that you would like to see deferred to the major study and review of the bill.

Given your comments about limited resources that governments have today, and given what the minister did this morning, do you think it's really a prudent use of taxpayers' money to go through this exercise now and start it up again in January?

Mr Howcroft: To understand your question, you mean start the second phase of the review in January?

Mr Duncan: Your organization expressed concern about making the best use of our resources. A major part of the bill was withdrawn today. You have advocated that the changes that the government has proposed are not all that significant from your perspective in terms of employment standards. Do you not think, given your comments about limited government resources, that maybe we ought to do this all at once and maybe we ought to consider the entire agenda instead of going through this exercise twice?

Mr Howcroft: We supported the government's initiative to deal with this in two phases, the first phase to deal with the more technical administrative aspects and the second phase to deal with the substantive issues where we felt flexibility could be better addressed. So we don't see this as a waste of resources at all. We're still seeing the administrative and technical aspects dealt with at this time while giving us more time and a full opportunity —

Mr Duncan: So you advocate two rounds of full public hearings and spending the money to do that when we're going to be back at this again in January? You're going to use taxpayers' —

Mr Howcroft: What we're advocating is enough time to fully consider and discuss the full dimensions of the substantive reform of the Employment Standards Act and that's going to take more time —

Mr Duncan: That's what I'm saying is because you put it on the table —

Mr Shea: Let him answer.

Mr Duncan: No, he's not answering, with all due respect.

Mr Shea: Let him finish the words.

Mr Duncan: He's not answering. You said — I didn't put this on the table — you're concerned about the use of taxpayers' dollars.

Mr Howcroft: That is a main concern, yes.

Mr Duncan: Given what you've said in your own presentation around the nature of the amendments, that they're purely administrative, that they don't affect workplace standards — which we don't agree with, by the way — and given what you said about the appropriate use of taxpayers' dollars, do you think this is an appropriate use of significant public resources, given that you yourself and your organization have now advocated that the amendments that are there are only administrative in nature?

Mr Howcroft: These administrative and technical aspects will enable the government to save more money more quickly. It will allow the government to focus resources now as opposed to waiting for some time in 1997. So yes, we view that as an effective use of resources. Allowing employment standards or employment practices officers to best focus on implementing these administrative changes, yes, I think that is an effective use of resources.

Mr Tascona: Would you be in favour of the electronic filing of appeals or electronic payment of orders?

Mr Howcroft: We haven't given that full consideration, but I think that's a direction that should be considered to see if it could work. I think technology is providing a lot of opportunities to save resources and moneys and we should be exploring new ways of doing things. So yes, I think that's something we should be looking at and will be looking at perhaps under phase 2.

Mr Tascona: Up until 1991, there was a \$4,000 limitation that existed on employment standards claims and that excluded severance pay. Do you feel the limiting of ministry-investigated claims to a maximum of \$10,000 to be a reasonable reform given that the previous limit and the fact that people now have to make a choice to go to court and not use government resources?

I'll give you the example of an individual, we'll say a non-union employee, a manager who receives a severance payment and termination payment that would exceed \$10,000 and this legislation would require them to make a decision for the \$10,000 or opt to go to court. Do you think that that's reasonable?

Mr Howcroft: I think you have to have a balance in the system and you have to have a cutoff at some point. Ten thousand dollars would address 96% to 97% of the claims currently filed. You're only dealing with very few numbers of claims over that \$10,000 limit. Many of those that are already part of a civil action will be dealt with. So just ensuring that the employment practices branch

can best use its limited resources to help those who perhaps need the most assistance, this \$10,000 cap will assist in that regard.

1350

The Chair: A brief supplementary, any government member? Mr Shea.

Mr Shea: Just a very quick one. In terms of questions raised earlier about the collection agencies, and you referred to this as you went by, saying you favoured the privatization, there was some concern raised earlier today in the hearings, and you may want to respond to it, about the possibility that by privatizing the collection agencies it would in fact put into place a mechanism that might put excessive pressure upon employees to settle prematurely. Have you any comment in that regard?

Mr Howcroft: Not really. I think it's best left to those who professionally go after moneys to let them do that. I saw this from the inside. I was an employment standards officer at one point and I saw cases where people didn't get anything because the ministry wasn't able to effectively go after those resources. They were not able to work quickly enough and follow the moneys around. Collection agencies would be able to provide for that kind of coverage.

The Chair: With that, thank you. We've reached our 15 minutes. Thank you both for taking the time to come and make a presentation before us here today.

Ms Houston: Thank you for your time.

JUDY FUDGE

The Chair: The next presentation will come from Ms Judy Fudge. Good afternoon. You've heard my litany about the 15 minutes, so I won't repeat myself. You've been with us so far for the whole day.

Ms Judy Fudge: I'm pleased to be able to present, though as a law professor, speaking for only 15 minutes is very difficult to do. Since 1987, I've been teaching at Osgoode Hall Law School at York University and my area of specialty is labour law. I've concentrated a lot of my research on employment standards and I was quite interested to see changes to the Employment Standards Act.

I'm particularly pleased to see Bill 49 called An Act to improve the Employment Standards Act because I've been long advocating improvements in the Employment Standards Act. But being a lawyer I looked through the fine print and I think it's false advertising to call it An Act to improve the Employment Standards Act. I think it also may be false advertising to talk about flexibility as if flexibility means the same thing to everyone. People should be flexible. It's good for their bones; they live longer.

What employers seem to mean when they say flexibility is that people should work whenever they want them to for whatever wages they want them to. When workers want flexibility, they want working times that meet their needs, they want family responsibility leaves and they want wages that they can live on. It seems to me that when we are talking about flexibility in this context, we mean that we're helping business to procure labour cheaper and to make workers work harder.

Today, I want to concentrate my remarks on the unorganized. The union movement is very good at representing its members, so I'm going to focus on that.

The Employment Standards Act in its various manifestations has a long history in Ontario. In 1920, we got our first minimum wages for women workers. We had maximum hours of work, vacation pays in the 1940s. In 1968, we got our first omnibus employment standards legislation.

The Employment Standards Act provides basic rights to all workers. It provides basic floors of maximum hours of work, overtime, minimum wages, pregnancy, parental leaves. It's particularly important for the most vulnerable workers, workers who work in the tertiary sector, in the service sectors, unorganized workers, new Canadians, women workers, but in fact it's a basic floor for all workers and the union movement has long been at the forefront of demanding basic floors because where you start helps to set off where you can end. So if you lower the floors, of course, we all get lowered off.

When I was looking through this legislation, one of the things I did was to look at the press release accompanying Bill 49. According to Labour Minister Witmer, these changes embodied in Bill 49 represent the first of a two-phase reform of the act that will cut through years of accumulated red tape, encourage the workplace parties to be more self-reliant in resolving disputes and make the act more relevant to the needs of today's workplace. They will also focus attention on helping the most vulnerable workers.

If any of my students had described this bill in this way, I would have said it was negligent misrepresentation and advised them that they would be potentially running a suit. It's not going to protect the most vulnerable workers. What this act will do is make it harder for people to enforce their rights. There's no point in talking about improving standards if people can't enjoy the basic standards that already exist. Right now we would all agree that the enforcement record of the Minister of Labour, under all the different governments, has been appalling, under Liberals, under New Democrats and under Tories. This legislation will not help these workers to get their rights and enjoy their rights; what it will do is create deterrence and barriers to seeking to enforce them.

It's easy enough to cut down claims if you make it really hard for people to pursue them, but how that can be considered as helping vulnerable people I don't really understand. So we're looking at improving the act through placing limitation periods for claims, proceedings, prosecutions and appeals. This will not improve.

I want to look at three basic areas: the time limitation periods, the monetary cap and the privatization of collections. Currently, people have two years from when the violation arose to make a claim. The minister claims that by moving it down to six months that brings it in line with other jurisdictions. That is not accurate. In British Columbia, you have six months from the termination of your employment to bring a claim, not from the fact of violation, and you have up to two years of money that you can claim. So this statement today was perhaps misleading. So she should talk to her staff about getting

proper training to read legislation in other jurisdictions. It's simply untrue.

What this is, a six-month limitation period, is the lowest in Canada. In certain jurisdictions, there's no limitation period. In the federal jurisdiction, there's three years; in BC, there's two years; in Ontario, there's been two years.

The reason why a two-year period is an absolute, necessary minimum is that if you're working for an employer, the employer is not supposed to retaliate against you if you bring a claim. But we know that 90% of all claims are brought by employees who have left their place of employment. That's because they don't believe if they bring a claim that they're not going to be retaliated against. So you're forcing workers — it seems the government wants people to work and not to rely on social assistance — to decide to either bring a claim and suffer retaliation while still employed, because they've only got the six-month period, or they could wait, deal with the violation, accept it, which is really unacceptable, and then bring a claim once they've found another job. You're forcing them, by lowering this limitation period, to either decide to forgo it or suffer retaliation. Six months is simply too short. People need two years.

The \$10,000 claim: Everyone points to the fact that up until 1991 there was a \$4,000 max on claims, excluding severance and termination pay. That had been universally condemned by every independent commentator who ever wrote about this stuff. So we're saying, "Well, \$10,000 is better than the \$4,000," but the \$4,000 was really, really bad. The only jurisdiction that has a monetary maximum is Prince Edward Island, at \$5,000.

Why should people have to bring an action in court? Now, this is very good for my law students; several of them are unemployed. But why would you say to someone — and it may be a domestic worker, because you can have up to \$20,000 or \$30,000 worth of claims owing as a domestic worker — "You have two weeks. You must seek legal advice. You can make your decision. Now, if you decide to go through the Employment Standards Act, if you're owed more than \$10,000, kiss the money goodbye. If you decide to go to your lawyer, seek your legal advice, pay your \$150 or \$200 an hour for your lawyer" — but maybe with the unemployment they'll be charging less, so who knows? Maybe it'll be cheaper if things continue on the way they are. Then you say to them, "Okay, you bring a claim."

1400

Does anyone here know how long it takes to bring a civil action for wrongful dismissal for complainants? Six years. If someone has more than \$10,000, they have to wait six years? It seems to me that's the old adage, "Justice delayed is justice denied," in this case.

If it's true that this system is so terribly backlogged and it's also true that only 4% of claims are for over \$10,000, how is that going to deal with the problem? I just don't simply see how it figures out.

There is a problem of all sorts of different legal actions happening in multiple fora, but I think there's been a slight bit of misrepresentation of how the law actually works. If I bring a wrongful dismissal action for termination which is in excess of what I could get under the

Employment Standards Act and an employment standards claim at the same time, the resolution of the dispute in the employment standards case is the resolution for the purposes of the court except for quantum. The courts have a very nice legal doctrine called issue estoppel that resolves this problem. How does it make sense to Ontario taxpayers to shift vulnerable workers, and maybe not so vulnerable workers, maybe people like you, to make them go to an expensive litigation mode and wait years when it costs more to go to court? It costs more for us to pay for judges. They seem to get paid more than employment standards officers and adjudicators. Why does that save money? I just don't understand. The air of unreality is hard to understand.

Privatizing collections: Something has to be done about collections because, as every academic commentator has ever said, the Employment Standards Act doesn't prevent violations; it doesn't stop people from abusing the law; it works as a collection agency — and a not very good collection agency. Two thirds of claims are not fully recovered. It's an appalling record.

Why would a private collection agency be any better than the government services when, according to the government's own internal reviews, the government's internal services are better at collecting debts owed to the government than private collection agencies? This is according to an article by Martin Mittelstaedt in the *Globe and Mail*, July 20, the two internal reviews.

On the basis of the only evidence we have, private collection agencies aren't as good as government services. It seems to me that if I'm a collection agency, what I want to do is to be able to make a profit. Under Bill 49, it's proposed that the collection agency could make a settlement as long as it had the written consent of the complainant, the employee who is complaining, and the settlement could be up to 75%.

Why wouldn't I just write to every employee and say, "Hey, I'll make a settlement," and then I go to the employer and I say: "Hey, I could pursue you for the full amount, and then I have to collect my fee and the government's 10% administrative charge, but if you don't give me any bother, I'll tell the employee, get his or her written consent, downgrade them to 75%. It'll cost you less, I'll get my money, we'll all be happier?"

The act specifically contemplates that this could happen, and it says that there shall be no coercion or fraud in the settlement. It specifically contemplates it but provides no mechanism of redress. You acknowledge the problem and then don't do anything to solve the problem.

It seems to me the most important thing around the Employment Standards Act is to stop the violations, not to improve collections. You're tolerating breaches of the law. I thought there were snitch lines to stop all sorts of welfare abuse; why aren't there snitch lines that you're running to stop all sorts of employer abuse?

Basically, if you are unscrupulous about abiding by the law and you're an employer who is prepared to make profits by breaching the law, you would be advised to breach this law. Your chances of a complaint are small. If there is a complaint, the chances of getting collection against an employer are small. Thirty-four per cent of the employers who do not pay up don't pay up because they

refuse to — not because they're bankrupt, not because they don't have the money. They simply refuse.

It seems to me that you should be looking at ways of ensuring the effective enforcement of the legislation, and that could be done very, very easily: audits of company books to find out. In various industries and sectors where we know there are lots of violations, you go in and you do a sweep. In 1981, there used to be about 1,200 audits a year. Now there are only 21. What's happened? We know there are all sorts of violations, but there were only 27 prosecutions last year. The most penalty that you have to pay is 10%. Why would you adhere to this legislation? What's it doing for scrupulous employers to have all of these unscrupulous ones let off the hook? I'm not even so concerned about them. I'm concerned about the people who actually work. If I work for free, I like to do it for something I support, not because I don't have a government that will help me enforce my law.

It seems to me also that there should be posting in all workplaces of your basic rights and entitlements. We do that under the Occupational Health and Safety Act; we required it under pay equity. There should be aggressive prosecution and enforcement. We shouldn't think of collection and then we shouldn't shift collection to the courts and to the private collection services.

If I have any time, I'd be happy to answer any questions.

The Chair: Actually, you've timed it extraordinarily well. There are 14 seconds left in our 15 minutes. None of us around this table could give our name in that time. I think we'll beg off. Thank you very much for coming in and making a presentation and being part of our proceedings here today.

AJAX-PICKERING BOARD OF TRADE

The Chair: Our next group up will be the Ajax-Pickering Board of Trade. Good afternoon to you both. Just a reminder we have 15 minutes for you to use as you see fit, divided between presentation and question-and-answer. I wonder if you'd be kind enough to introduce yourselves for Hansard.

Mr John Wiersma: Thank you very much, Mr Chairman and members of the committee. My name is John Wiersma. I'm the president of the Ajax-Pickering Board of Trade. With me today is Lesley Whyte, our board administrator.

Our board represents some 400 businesses in the towns of Ajax and Pickering, and these businesses vary in size from approximately five employees to over 500. Our board also represents a broad cross-section of the business community, which includes the retail, the service and the manufacturing sectors.

We appreciate this opportunity to make our views known on Bill 49. Our members obviously have an intense interest in labour issues, especially the provisions contained in this bill, because they affect every employer in the province.

Let me start my comments by saying that we laud the government for its businesslike approach in trying to streamline the administration of the Employment Standards Act. The government, like the private sector, must

be efficient and effective in the way it conducts its business. The provisions in Bill 49 go a long way towards making the administration of the act more user-friendly and more effective for both employers and employees.

We are also very supportive of the two-stage process with Bill 49 as the first stage devoted to the administrative issues.

In general, we are in agreement with the improvements in the limitation periods. Currently, some of these claims take too long to resolve and it is unfair to leave the employer with the uncertainty about a potential financial liability. For example, as it is now, it can take up to four years from the time of a potential violation of the act to the time an employment standards officers issues an order, and we feel that is too long, not only for employers but for employees as well, because unresolved disputes in the workplace of this nature create incredible moral problems in the workplace and they affect the entire employee group. The timely resolution of employment disputes is one of the key factors towards maintaining a healthy labour relations climate.

We endorse, therefore, the reduction in the claim notification period from two years to six months, but we continue to have some reservations concerning the two-year period reserved for ministry staff for making decisions with respect to issuing orders or refusing to issue orders. We suggest a one-year period would be much more appropriate. This would still leave up to one and a half years from the time the act may first have been violated to the issuance of an order.

Furthermore, we agree with the extension of the appeal period on orders from 15 days to 45 days. The 15-day period is too short and it does not provide the right amount of time for an employer to review the nature of an order and to prepare the case. Providing more time will likely result in better research and more appeals being withdrawn.

We endorse the maximum claim amount of \$10,000 and the provision that claims over \$10,000 be handled by the courts. We are encouraged by the process that provides for settling claims under \$10,000 through the services of an employment standards officer prior to a full investigation. As an employer, I have firsthand experience with the professionalism that ministry staff bring to the dispute resolution process and I'm very impressed with this informal approach. This process saves both parties a great amount of time and costs. With regard to the \$10,000 limit, it seems very reasonable. Claims over \$10,000 are obviously more litigious in nature and they should be settled in court. There must, in my view, also be a minimum claim amount to eliminate the many small nuisance claims that could arise. This could be set by regulation, as proposed in the bill, and we suggest the minimum be set at something like \$200.

1410

We are very pleased with the provisions related to enforcement. For employees covered by bargaining units, the grievance process is an excellent vehicle for resolving these disputes. It is not clear to us from Bill 49, however, which time limitations ought to govern where a collective agreement is in place. Are the parties governed by the

time limitations in the act or those in the grievance procedure? Clarification is required in this area. We suggest that the appropriate time limitations are those in the grievance process. These can normally be extended by the mutual consent of both parties if this is necessary.

We are also supportive of the provisions which prohibit contemporaneous actions under the act and in a civil court. We agree that the action should follow one process or the other, but not both. This measure eliminates duplication and reduces costs.

We endorse the contracting out of collections. Collections are better done by a collection agency that has experience in the field. In my view, it is a poor application of resources to have employment standards officers taking on this task. These are professionals and they should be dedicated to facilitating solutions between employers and employees. We agree that collection agencies need the freedom to negotiate settlements to no less than 75% of the claim if the employee consents. This flexibility will result in a greater number of claims being settled, and at a much earlier stage.

The streamlining of the current act by permitting electronic filing is going to improve the general processing of claims, and it brings the act into the 1990s. We endorse this initiative.

In conclusion, we are very supportive of this bill, with a few exceptions as noted. The bill will cause the parties to rely more on processes already in place in the workplace or, alternatively, to follow a simplified process with the help of an employment standards officer. It also avoids duplicate actions and the accompanying costs associated with the same.

Again, we thank the committee for the opportunity to participate in this hearing and we are available to answer your questions.

The Chair: Thank you very much. That leaves us with two minutes per caucus. We'll start with the official opposition.

Mr Duncan: I really don't have any questions, Mr Chair. The presentation is very clear.

The Chair: Mr Christopherson?

Mr Christopherson: I do. Thank you for your presentation. On the first page, you state that your members "obviously have an intense interest in labour issues, especially the provisions contained in this bill, because they affect every employer in the province." So do you think this is an important bill?

Mr Wiersma: I think it's a very important bill, yes.

Mr Christopherson: How do you think that squares with the minister, who said it's not a very important bill, that it's only minor housekeeping?

Mr Wiersma: In my view it affects every employer, as I've noted in my presentation, and I feel these issues are important.

Mr Shea: Who said it's not important?

Mr Christopherson: You'll get your chance. Go ahead, please.

Mr Wiersma: I feel that these issues affect every employer, or could potentially affect every employer; hopefully not. But I think they're important.

Mr Christopherson: I also found it interesting on page 4 where you said the minimum claim amount could

be set at \$200 to eliminate "small nuisance claims" that could arise. It was suggested earlier by another presenter, and I thought it was an excellent point: Does that mean you would also feel that if any employee stole from one of your members, if it was less than \$200, one wouldn't pursue it in the courts or anywhere else, that it was just a nuisance matter? Because in effect, the employee has been stolen from.

Mr Wiersma: I'm not quite sure to what extent the government can expend resources on small claims. It's a matter of concern; I don't know how the government would handle that. To me, that would be done by setting a minimum amount. That's not to say that these are not important issues, but I don't know if it's a wise use of resources to spend a lot of time on a \$200 claim.

Mr Christopherson: I would suggest to you that given the fact that the Employment Standards Act is the bill of rights for workers and affects those who don't have collective agreements even more than others, they're the people who need the \$200 and could probably least afford any legal advice and assistance or afford to take time off work to get it through Small Claims Court, so in effect you're saying their \$200 doesn't count.

Mr Wiersma: I didn't say that. I said for them it's important. I'm not sure if the government has the resources to commit itself to resolving those disputes.

Mr O'Toole: Thank you very much, John and Lesley, for your presentation and comments. Just a very quick reference: In your introductory remarks, you mention that your organization represents some 400 employers in the Ajax-Pickering area. I'm just curious. Would those employers be non-unionized, representing unionized workplaces or a mixture of both?

Mr Wiersma: Maybe I can ask Lesley to answer that question.

Ms Lesley Whyte: A unionized environment would probably be minimal. About 65% of our membership are small business. We target those as fewer than six employees. About 10% is large business, and that 10% would probably fall into a unionized environment.

Mr O'Toole: So the smaller businesses tend not to be organized?

Ms Whyte: No. Actually, they're quite organized, especially when we take issues like this to them. We do it through survey.

Mr O'Toole: In your humble opinion, do you see a fairness in the workplace today? There are a lot of entrepreneurs out there trying to create work and income for themselves and others. Do you see a fairness in the workplace among employers, the new employers? We're all told that the future for employment is small employers, that the large corporate entities of both unions and companies are kind of going the way of the history lesson. In your small businesses, do you see fairness in their relationship with their employees?

Mr Wiersma: Maybe I can try to address that. I personally am involved with a business of about 50 employees. We have a bargaining unit. I believe that among medium-sized employers, there really is an effort made to try to work with employees — they're our most important resource — and treat them fairly. I can't speak for the small businesses per se.

Mr O'Toole: The point I was trying to make is that the world of work itself indeed is changing and the world of the unorganized workplace is probably the highest growth area, and that represents a threat to the organization of labour itself. We're seeing downsizing and competition. Do you think this act or these small changes allow the small employer to deal with the Employment Standards Act itself, making it more workable in administrative ways?

Mr Wiersma: Absolutely. I believe it really streamlines it and makes it more understandable. I read through the act. I had no difficulty understanding it. The enforcement of it is going to be a lot of more successful if these amendments are approved.

Mr O'Toole: That's the intent of this government.

I want to correct a comment made earlier by one of my partners here. The minister certainly did not dismiss the importance. The whole focus of these provisions is to protect the most vulnerable — those are the words she uses repeatedly — and use of scarce resources, which is another thing that should be clarified.

The Chair: Thank you both. We appreciate your taking the time to come before us here today.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: That leads us up to our next presentation, the Ontario Public Service Employees Union. Good afternoon, Ms Casselman.

Ms Leah Casselman: Non-frightened union people. Good afternoon. With me today is Robert Rae, who chairs our employee relations committee with the Ministry of Labour. You will be hearing from him tomorrow on the specifics of the impact of this oxymoronically termed document about improving employment standards.

OPSEU is participating in the review of Bill 49, representing the unionized women and men of the Ministry of Labour who enforce provisions under the act you're reviewing today. We also represent about 100,000 other members of the provincial public service, the community college system and about 300 units within the broader public sector, small groups that are seeking to be unionized.

1420

We appreciate your invitation to appear and the fact that these hearings are even taking place. It is some evidence that, unlike the important contribution of public employees, the roles of opposition parties and public debate are not yet reviewed merely as red tape to be cut wherever possible.

We are vitally concerned about the future of the Employment Standards Act as one of the underpinnings of the basic rights of workers in this province — workers who are taxpayers, who contribute to the economy. We will comment briefly on key elements of this legislation and indicate why it should be set aside pending a full review of the act later this year.

First, we must indicate that it is most troubling to be pledged full consultation on employment standards, only to see Bill 49 introduced as "housekeeping" and set for quick passage. If passed in its present form, Bill 49 will

result in much greater hardship, especially for the thousands of vulnerable and low-paid employees who continue to be victimized every year by illegal employment practices, including domestic workers, visible minority workers, women and those in the cleaning, food services and garment industries.

Bill 49 will also greatly ease the pressure on employers to comply with assessments for back wages and related entitlements. It will deprive Ontario workers of the protection of at least the minimal standards of hours of work, overtime pay, holidays, vacation and severance pay. Key amendments to the act in Bill 49 appear designed to undermine the concept of statutory standards to discourage employees from seeking redress and, through a reckless privatization scheme, offload the province's responsibility for enforcement.

We will briefly comment on some specific provisions of the proposed act.

Even though I understand the minister recanted on the removal of section 3 this morning, I would still like to comment on that, because as we've seen before, these things can come back in a different format.

Section 3 replaces 22 years of statutory minimal workplace standards with a contracting-out provision that permits negotiated collective agreements to override legislated standards on severance pay, overtime, public holidays, hours of work and vacation pay if, when assessed together, a greater right is conferred. While the section applies to organized workplaces only, it is evident from public statements by the minister and senior staff that the government hopes to soon extend this drastic change to unrepresented workplaces.

How is a "greater good" at section 3(3) of the bill to be determined? Negotiations will undoubtedly become more arduous and confrontational. Unions and employers will be forced to bargain over a broader range of matters and grapple with identifying equivalencies between different benefits and terms and conditions. Monetary benefits will get compared to non-monetary matters, and nebulous global packages will struggle to replace the statutory floor of minimum entitlements. What kind of smorgasbord of rights and entitlements will end up before arbitrators, leading to lengthy and expensive delays? Proposals at section 3 of the bill will prompt employers to table rollbacks of standard entitlements. What other conclusion can we draw in the absence of explicit legislative language on how a negotiated package is to be assessed?

Flexible standards, as promoted in section 3, will certainly not advance the ministry objective of workplace self-reliance. By permitting workplace parties to contract out of important minimum standards, the government assumes a balance of economic power is at play whereby fair tradeoffs will be achieved. But we anticipate many more harsh conflicts and diminishing working conditions, especially in smaller and newly organized workplaces.

The fact that up to a third of employers already have been found to be violating the Employment Standards Act is evidence enough. To paraphrase Tommy Douglas — you can explain to them who that is later — "'Let's have greater self-reliance,'" said the elephant as he danced among the chickens."

Obviously OPSEU is very concerned when vital public service work is contracted out to for-profit agencies; doubly so when that work defends the living standards of workers who suffer from illegal employment practices. This is the case in section 28, the privatization element of Bill 49. We urge committee members to ask hard questions about the gaps in accountability to both complainants and the public inherent in these amendments. Public employees report through the deputy minister to you, the legislators. The effectiveness of our work can be directly scrutinized. Employment standards officers and their co-workers do not have a direct personal financial interest in the percentage of an assessment for back wages collected from employers.

On the other hand, what incentive does a private operator have to make every effort to recoup the full rate of assessed wages owing to an employee? Why are there only passing references in the new subsection, 73.0.2(1), as to the conditions that the director can impose on private collectors and on "reasonable" fees and disbursements? Why are there no provisions setting out sanctions for private operators who collect assessments through fraud or coercion? Why the cavalier approach to spending public dollars when it involves privatization? Finally, why is it not evident that permission for private collectors to arrange compromised settlements raises the likelihood of abuse and further exploitation of workers?

These are among the reasons we label the Bill 49 approach to collections as reckless. If more evidence is required, as Judy Fudge was saying earlier, look at last year's study of the central collection services agency within your own Management Board of Cabinet. This review found the public service collections function to have a much better rate of return and a better cost-to-revenue ratio. The same review expressed concern about the cost of private sector agencies being used by that ministry. Fees averaged 23%. The tactics, language and practices of private collection agencies, including creaming more lucrative accounts, were found to be troublesome. A full review of the Employment Standards Act should precede any decisions about private collection.

OPSEU is fully aware of the weak rate of recovery of funds by the employment practices branch. Dedicated employment standards staff require more resources, not fewer, to prevent violations of rights in the first place, to conduct audits, to seriously fine and prosecute lawbreakers, and to protect complainants from reprisals. There are 40,000 formal complaints a year and five times as many general inquiries. This is no time to lay off over 400 ministry staff, 10% of those working in enforcement.

Professor Judy Fudge from Osgoode Hall has described in her study on employment standards how the meagre resources put towards recovering funds for cheated workers contrasts markedly with the spending spree to recoup alleged welfare fraud.

Section 20 of Bill 49 eliminates access by union members to the investigation and enforcement services of the Ministry of Labour. As with the privatization of collections, we seriously question amendments that put enforcement of a vital component of public legislation at the mercy of the private arbitration process. This should no more be permitted than should victims of crime be

obliged to pay the local crown attorney to prosecute the abuser. How can arbitrators be expected to have the investigative resources and expertise of the Ministry of Labour in adjudicating increasing complex matters?

OPSEU is deeply troubled at sections 19 and 21 of the proposed act because they force non-unionized workers with complaints to make an either/or choice between access to the employment standards branch and a lengthy civil suit that few people can afford. Onerous time limits of just two weeks are also imposed on this unacceptable choice.

These new conditions on access to justice are exacerbated by the new maximum claim limit of \$10,000 on recoverable moneys for back wages, vacation, severance and termination pay. Hundreds of awards under the act are being made every year in excess of this new cap. It is only reasonable to expect that the most modestly paid workers in the province are also the least likely to be able to pay legal fees or withstand a lengthy wait for a civil suit to be completed.

1430

OPSEU members are workers drawn to public service. We frequently assist victims of rogue employers when they visit the legal clinics, social services or health care facilities that we staff. We urge you to safeguard open access to publicly funded ministry services where employment standards claims ought to be pursued without an imposition of a maximum.

By replacing the existing two-year limit on claims for back pay with one of just six months in section 32, Bill 49 fails to recognize the serious hardships that are bound to follow. Vulnerable workers take a much longer time to feel safe enough once they have moved to a new job or to become well informed enough to assert their rights. It is inappropriate to impose legislation that radically diminishes their ability to recover moneys owed to them. This restriction is particularly worrisome when coupled with the other limitation period changes at section 32 whereby prosecutions under the act may now take a total of four years.

Finally, we wish to point out that there are modest improvements in the act set out in Bill 49. They should remain in place when a full review of this act takes place this fall. These include the clarification in access to at least two weeks' vacation pay in section 8 and clarification of seniority credits for time on parental and pregnancy leave in section 12 of the bill.

To wrap up, OPSEU questions the rush to quickly pass drastic amendments to the Employment Standards Act in advance of a thorough review of the statute later this year. The proposed changes to the act, as set out in Bill 49, constitute a very unhealthy development for individual workers in Ontario, for the living standards of average and modest income families, and in turn for the provincial economy in general.

Truly flexible, self-reliant workplaces and greater productivity are derived not from deregulated working standards, longer hours, unpaid overtime, lower minimum vacation and severance pay or elusive contracted-out enforcement. These production advantages come from a commitment to superior training, fair wages and benefits,

safe, healthy workplaces and enlightened management practices that embrace employees' contributions.

As long as Ontario employers fail by as much as one in three to abide by even minimum workplace regulations as currently set out in the Employment Standards Act, the requirement remains for a rigorous, well-resourced government commitment to uphold and enforce minimum working conditions for every worker in an effective and timely manner. The people of Ontario deserve no less.

The Chair: Ms Casselman, we've got one and one quarter minute, so there will only be one question and it will be the official opposition.

Mr Duncan: You would be of the view then, Ms Casselman, that prior to adopting a statute like Bill 49, we need to know the government's entire agenda and have a full debate around the Employment Standards Act amendments they'll eventually bring forward?

Ms Casselman: Clearly. I mean, you've got different arms of the government doing all kinds of things and making all kinds of different rules. The speaker before me talked about the waste of time for a government to go after claims of \$200, and yet if you're a welfare worker, you are ordered by law to go after anything over \$2. So where's the combination of any kind of consistency from this government?

We need to know what the whole plan is here. Even business columnists in newspapers are referring to their agendas as Alabamas of the north. That's not the way to build an economy to ensure there is a livelihood for everyone who is a member of that society.

The Chair: Thank you again for taking the time to come before us here this afternoon. We appreciate your presentation.

LABOUR BEHIND THE LABEL COALITION

The Chair: The next presentation will be the Labour Behind the Label Coalition. As you've undoubtedly heard me say to previous groups, we have 15 minutes for you to use as you see fit, divided between a presentation and question-and-answer period. Would be kind enough to introduce yourselves for the benefit of Hansard.

Ms Shelly Gordon: I'm Shelly Gordon. I'm here representing a coalition of groups called the Labour Behind the Label Coalition. With me are Fanny Yuen from the home workers' association and Bob Jeffcott from the Jesuit Centre for Social Faith and Justice, who may help me with answering questions if I leave any time for that.

The Labour Behind the Label Coalition is a coalition of unions, social justice groups, immigrant women's groups, international solidarity groups, church groups and unions — I said that already — concerned with working conditions in the garment industry. So what I want to talk about today is employment standards in the garment industry, Bill 49 and the garment industry, because what our coalition has come together to do is to try and promote better working conditions in the garment industry both locally and internationally to sort of exert some counterpressure on the low wage competition in that industry and the kind of exploitation that it leads to both here and abroad.

What I want to talk about is the situation of garment workers in Ontario — most of them are in Toronto, but not all of them — the importance of vigorous enforcement of the Employment Standards Act for those workers, the effect that the changes proposed in Bill 49 might have on those workers, and then what our suggestions would be for improving enforcement of the act for those workers.

I think you all know that until the late 1980s, garment manufacturing was the single biggest industry in terms of employment in Metro Toronto, or maybe in the city of Toronto. A lot of factories have closed since then, about half the factories, but the industry is not dead. There are still at least 21,000 workers in that industry in Metro, and those are the ones that we can count. Those are not the ones who are home workers and those are not the ones who are in sweatshops that only operate a week or two and then move to some other location.

The way that garments are produced in Toronto has changed substantially since the late 1980s, with factories closing and with small sweatshops kind of taking their place and with contractors giving more and more work to home workers, people who sew these garments in their homes. I think members of the committee would be quite surprised to know what clothes are being sewn in people's homes. It's major retail chains in the malls, it's high-end designer stuff, it's a lot of women's clothes. You would be quite surprised. It sells for a good price in the store.

The whole move from factories to home workers and sweatshops, as I said, both here and abroad, is to try and lower the wage costs of production of garments. I guess our position is that people should be able to earn a decent living working both here and wherever else these clothes we are wearing are made, and that's what we're working towards.

I'd like to tell you one particular story. I think people are going to bring a lot of stories forward to you, but those of us who are bringing them spend our days working with both organized and unorganized workers who are having problems with their employers whose employment standards are being violated. You may not have spent a lot of time talking to people like that, so maybe we can bring the benefit of our experience to the committee.

Minister Witmer indicated this morning that she's familiar with the situation of garment workers, and she is and has indicated her support for our campaign in the past, so I hope we'll see it continuing.

1440

I'm sure you know that people who work in their homes are covered by the Employment Standards Act for minimum wage and for other provisions of the act. So even though they're paid a piece rate, they're entitled to minimum wage. In fact, home workers, in the last three years I guess, are entitled to a 10% premium on minimum wage in recognition that they have to pay expenses for other costs of production like electricity and space and thread and their own sewing machines and stuff. So in Ontario now, industrial home workers are entitled to \$7.54 an hour. Even though they're paid at a piece rate, contractors are expected to — well, in your own industry

you know how long it takes to make so many something-or-others, so you set the piece rate at how many pieces you need to sew in an hour. So if a contractor drops off a bundle at somebody's house on Friday night, wants them back Monday morning, and says that will be 25 cents a sleeve, the expectation then has to be that a person can reasonably sew enough sleeves in an hour to make \$7.54 an hour.

How the act has worked in the garment industry now — I just want to use one example but I guess what's unusual about this is that the garment worker has actually pursued it through the Employment Standards Act. That's the only unusual aspect of it. It happens to thousands of workers.

Mrs Y was a skilled sewer in the garment industry in Toronto most of her adult life. She worked in factories, and when they were closed, one of her employers offered her home sewing and she took it. She didn't get paid minimum wage for her work, and her permit with the ministry actually said she'd be paid even more than minimum wage for her work, quite a bit more. But she kept the work because in the industry there's not a whole bunch of contractors who are paying minimum wage and then a few bad apples. Almost nobody is paying minimum wage. So you don't throw away the contractors who don't pay you that in hopes that you can work for one of the two that does. Some contractors, it goes up and down. It depends on what the retailer is going to pay them. I won't go through the whole chain of what happens in the garment industry now, who is controlling the price points and how that affects wages. There's a whole lot to be said about it, but it takes too long.

So she worked for this contractor for about four years, and after four years she finally did speak up for herself. She thought: "I've got a lot of experience with this guy. I've done really good work for him. It's time that I said, hey, what about my" — it wasn't \$7.54 then, but whatever the minimum wage was. She asked that question once and she never saw that guy again. She waited a few weeks and called him up and said, "When are you bringing something else over?" He said, "I'm not." That was it. He just basically terminated her for inquiring about the rate.

She filed a complaint for wages owing for two years, and vacation and termination pay. She filed that claim with the Ministry of Labour in December 1993. The claim, over two years, amounted to about \$10,000. Here's another example where, isn't \$10,000 a claim from some executive who was wrongly dismissed? Well, no. It's not necessarily the case at all. Maybe some of them are. We don't work with anybody like that, so other people will have to tell you that story.

The ministry took exactly two years to come to a conclusion about her case, and it's still in dispute. Hearing dates have been set all the way into 1997. So her case isn't settled yet and it may not be settled in her favour; I can't determine that. But for the purposes of our discussion, let's say that it is and that she was owed \$10,000 for two years' work. That's about a full year's wages for her. She was making \$12,000 to \$14,000 in a really good year doing what she was doing. So she's owed a full year's wages and it's four and a half years

since she started doing the work and she hasn't got that money yet.

Her case points out several problems with the way the Employment Standards Act has been enforced to date, and unfortunately we don't think Bill 49 addresses these. We understand Bill 49 is the act to address enforcement, not the content of the act.

I've already commented on the time lines. The ministry has four years to deal with a claim between the investigation and going after the money. Now Bill 49 proposes to limit the worker's access to six months, the investigation period to six months, and leave that four years at the ministry level intact. I would like to propose a reversal of that, that the ministry have six months to conduct an investigation and that workers retain their two-year time period.

The reason I want to do that is, I think nobody has said to you really clearly today that when you complain to an employer who is knowingly violating the Employment Standards Act that they are doing so, that is your last minute of work with that employer. I could just tell you story after story. If it's somebody who's doing it by mistake, they'll probably correct it, but in an industry based on getting the lowest possible wages, that's your last minute of work. People don't complain because they'll be fired.

What you're saying to people with a six-month limit is, "As soon as you find out, you go down to the ministry and you tell them." Like Professor Fudge said, that's a choice between your job and your rights. You have to make that choice before you go down to the ministry. What people do now is they wait until they find something else, reasonably enough. They want to work in order to make a living. That's how they want to make their living, working, so they do what they can. In an industry like the garment industry where everybody's trying to pay way less than minimum wage, everybody's paying as little as possible, you don't have a whole lot of options. "I'm going to drop this bad egg and go work for one of the good ones." It's a shrinking industry and it's a period of very high unemployment.

So this case, Mrs Y finds out the employer's not going to give her any more work, she's terminated. But she waited a few weeks: Is he coming back? Is he not coming back? Then she kind of explored what were her options under the law and made a decision and it was actually several months before she filed a case. She would have lost, then, her entire claim period. Fanny can talk about this some more.

Other home workers have said, "What happens to giving employers the benefit of the doubt for a couple of weeks?" You know, "I can't pay you today," or "The cheque bounced today," or "I can't pay this month; can you hang on?" Your claim period starts to tick. You've been reduced to six months anyway. What if you wait? You can't afford to wait any more if it gets reduced to six months. I really think the two-year limit is the one that's going to have the biggest impact.

People stay in bad jobs because they need bad jobs and they look for something else. If they know they're getting ripped off, they look for something else and as soon as they find it — they're owed that money. What we say to

them now is, "You're owed that money and you don't give it up by keeping on working for a living for that person until you find somebody else." But the six-month time limit would change that.

There are other parts of Bill 49 that we think will have a negative impact on garment workers. It's both the minimum and maximum amounts that people have spoken to you about. The work's been done; people are owed the money. I don't see what's fair about saying to the worker, "Well, you got ripped off for too much or you got ripped off for too little; the ministry's not going to do anything about it." The work's been done. The money is owed under the act, and as far as I'm concerned it should just be payable. That some of it's too little and some of it's too much, I don't see the fairness in putting that forward at all.

The other proposal in Bill 49 we were worried about in the garment industry was the one the minister said this morning she would defer, around allowing unions and employers to contract out of some employment standards. There are very few unionized shops left in the garment industry and you can bet that if one negotiates no overtime until 56 hours, at all the non-union shops in the area the workers are not going to be able to say, "No, no, we get overtime pay after 44 hours; it's just the unionized shop that doesn't get overtime pay until 56 hours." It's just the whole ripple effect of, in the workplaces where workers are strongest, that they should take some lesser — you know that it's going to be rippling throughout the rest of the workforce.

People have talked as well about what it would mean for someone who earns \$10,000, \$12,000 or \$14,000 a year to go to court. To go to court for \$10,000, you have to hire a lawyer, so where in the family resources there would be money for a lawyer would not be clear. It just couldn't happen. People would just have to give up what they were owed.

I want to talk briefly about — oh, I'm giving up all our time — what we think would improve enforcement of the act. In the States, the Department of Labour, knowing that the garment industry is like this, has taken on doing sweeps of the industry. What we argue for is that — you know, there are certain industries which can be identified that are based on low wages — the ministry take a very proactive approach and do a lot of spot audits. When they get a complaint from one employee, take a quick look at the books when they're in there. Are the other employees getting ripped off too? There are a whole bunch of proactive things ministry staff could do to just make it — Judy talked a lot about you're not likely to get caught, and if you are likely to get caught, you'll only pay the one person. There are some easy ways to change that and to encourage compliance with the act through letting employers know they won't just get away with it forever.

1450

One of the other things we've argued is that, to try to protect workers from losing their jobs, one of the ways is to, as a matter of course, take complaints from third-party representatives, legal clinics or lawyers or unions or such, where we know there's a widespread violation. It just protects the particular workers there.

I'd better speed up. Those are our recommendations for improved enforcement. We will be back to discuss the contents of the Employment Standards Act, and we really look forward to that, to try to bring changes to the act that will protect the new workforce, the changing workforce.

Minister Witmer in 1992 and 1993 supported the demand for stronger enforcement from the Coalition for Fair Wages and Working Conditions for Homeworkers and we really hope we can count on her continued support, both through Bill 49 and the review of the Employment Standards Act. We've enclosed some of the letters she wrote to our sister coalition then and hope she'll continue to support us. Thank you very much for your time.

The Chair: You're just over 15 minutes. Thank you very much for taking the time to come down and make your presentation for us today. We appreciate it.

CANADIAN UNION OF PUBLIC EMPLOYEES LIBRARY WORKERS COMMITTEE

The Chair: Our next group up will be the Canadian Union of Public Employees library workers committee. Good afternoon, and again we have 15 minutes for you to use as you see fit, divided between presentation and questions and answers. Mr Burdick, I take it?

Mr Steve Burdick: That's right, thank you. My name is Steve Burdick. I'm the chair of the library workers committee in CUPE. I'm not going to go through the brief which we've prepared for you and of which I've given copies to Mr Arnott to distribute to you all, as well as those of you who could not be here today. But I do want to highlight some of the important things and see if you'd like to ask some questions.

I guess by way of preliminary I should mention that it's not necessarily my expectation that all the members of this committee will be equally familiar with the library sector. It's an important sector in Ontario and one that's received a fair amount of attention from previous governments as well as the current government.

By way of introduction further, I should let you know that we, as the library workers committee, are one of the jurisdictional groups within Ontario's municipal employees' coordinating committee, which represents a little over a third of the 170,000 workers in CUPE Ontario. The library workers committee itself more directly represents about 4,500 workers: some 50 or so public libraries in Ontario, almost all of the large and middle-sized institutions in the province and a number of the smaller ones, as well as a few university and college-type libraries.

I should tell you a little bit about the sector before I talk about what seems to be going on with the Employment Standards Act and the changes the present government wishes to make to that act.

First of all, it's our contention, and I think it's a contention that the provincial government has to some extent accepted previously, that the library sector is a key sector in the economy of this province. We all know that Ontario, like the rest of the country, is deeply enmeshed in what's now called the information age. Public libraries

are a key element in making sure the public has access and use of the proliferation of this information and some way of navigating through this enormous amount of information.

The information we have and make available to the public serves it economically, of course. Small and even large-sized businesses rely on us considerably for the assistance we can provide in getting them timely and comprehensive information. There's no question that the library sector continues to be, de facto, part of the educational structure of this province. A constriction of the resources available in the educational sector has really meant that students and their teachers point to the libraries of this province more and more to enhance, complete, do all the things that they need to do for which they don't now have the resources. The resources they have, they find to be dwindling.

At the same time, we have a lot of pressures. The first one is that the demographics of the province are changing rapidly, which basically means we have a lot of users now and we're increasingly having more such users, particularly in the large urban centres, whose first language is neither English nor French. Our collections have got to be changed to reflect that so they can have some use of this sector. The ways we provide service also have to be changed. This is a very real concern for us. This goes both to English as a second language but also to a whole host of other materials.

We also have an enormous amount of financial pressures. I won't recite all the figures — I'm sure you know them as well as I do — but the long and the short of it is that directly the library sector has suffered enormously over a two-year period in which we're now entering the end of the first year, and we suffered indirectly through the cuts in transfer payments to the municipalities on which most of our middle- and large-sized libraries particularly rely, as do many of our smaller libraries. Cuts in the program grants and the per-household grants have also been a problem, as well as in the direct reductions to the special service boards, and that goes to the OLS south and north and Metro Reference. So that's a big problem.

We're supposed to be providing the same, in fact better, service, with fewer resources. That's a problem.

At the same time, the technology itself is bringing many, many changes to us. The past government and the current government have retained this, to some extent have provided a lot of capital resources so that libraries can get hooked into information sharing and distribution. That's great. There's been some money made available for staff training, which is a key component of all of this, perhaps not enough, but at least that's been there. Basically the technology has meant a lot more pressures on our service as we try to cope with that and rejig our services.

While all of this is happening, how do you think library administrators are responding? They're responding by being very tough these days. The way they're being tough is showing up in collective bargaining, which has now resumed after the social contract has lapsed; and it's also showing up in an increased number of health and safety problems, particularly around workplace stress, RSIs and problems that have to do with the new technol-

ogy and the increased work pressures. The work pressures are enormous in our sector right now.

This does translate into more discipline problems. It translates into more dismissal problems. It basically translates into more problems where workers are likely to have recourse to the Employment Standards Act or whatever legislation follows it. Now, it's true we represent most of the organized workers. The employers there, of course, are dealing with us in collective bargaining through their unions. But the small libraries in this province are largely still unorganized. Those workers are very vulnerable, and if they are dismissed or they're disciplined, they don't have a lot of resources to turn to, so our committee is very concerned about them, as well as everybody else.

I'm not going to go through in great detail some of the general concerns that are in the OFL and the CUPE Ontario submissions; I'm sure you've seen those already. They cover a whole host of items, chief of which have to do with the enforcement provisions, whether there is or is not a collective agreement, the maximum and minimum claims, the use of private collectors and the limitation periods. All of these things are touched upon in our brief and I refer you to that.

I think what most concerns our committee, however, is this whole notion of flexible standards, the changes that, I gather from the previous speaker, the minister is considering deferring at this time. In the event that she doesn't or in the event that's still up in the air, I want to get our two cents' worth in on it. Those of course are the changes at subsection 3(3) of the bill.

I guess our concern here is that, given the enormous pressures our sector is under, there's no question that employers are going to try to make some sense of this provision. I have to tell you, with the greatest of respect, that the provision itself is very unclear, because I think it's going to be very hard for employers or unions to figure out how to assess the varying value on a single scale of the various rights that are referred to at that section. For example, if we, under a collective agreement, have better rights for severance, but similar rights under vacation or our wages are better, how are we going to roll all these things together if the employer comes to us and says, "Well, we're proposing cutting something here below what's in the Employment Standards Act"? It's going to be very hard. That lack of clarity is certainly only going to add to the bitterness at the table. I assure you, there will be a lot of bitterness at the table, not just because of the substantive changes, but because it's going to be very hard interpreting this particular provision.

1500

In the light of all the pressures that are already present in our sector, we know that employers are going to be difficult. The bargaining has begun in this province and we're seeing very difficult bargaining right now, particularly in the library sector, as in the municipal sector. I would urge you to give real serious consideration to not going ahead with the amendments that are in this bill.

Those are basically my remarks and I'd be only too happy to expand on them if you have some questions.

Mr Christopherson: I appreciate your submission. Thank you. I noticed on page 7 you talked about the time

restrictions — two years to six months. We've heard from a couple of business organizations — chambers and other associations — where they talk about the fairness to employers in terms of the timeliness of these sorts of things. Could you just expand a bit on why you see this being so unfair in the scheme of things in terms of balance between employers' rights and employees' rights?

Mr Burdick: My concern is that we're unaware that the existing provisions have been more of a problem for employers than they have been for employees. As the previous speaker was saying, for employees there's a real problem around reprisals. Let me assure you that reprisals are not only a fact in the non-unionized sector; they are also a fact in the organized sector. In many cases, employees will be reluctant to file claims as soon as they're aware that they've got a problem because they know that filing that complaint is only going to make them even less attractive to the employer.

In a non-organized situation, this may, as the previous speaker said, amount to the choice between a job and the application of one's rights. In an organized situation, it may not be quite so drastic a predicament, but it can be a very unpleasant predicament. The employee will be, in all likelihood, labelled as a problem employee — I've seen that happen — and one complaint is not the end of the issue. The employer doesn't say: "Oh well, we've got a problem. Let's just get on with life as usual." Other problems suddenly start appearing and one thing leads to another. That's why we don't think it's particularly appropriate to start changing these limitation periods. I hope that's helpful to you.

Mr Christopherson: Yes, very. You mentioned early in your comments the impact on information, any less information not being available to particularly those that don't have research departments and all kinds of staff to go and look things up in terms of one's rights and ability to defend them. In its extreme, how far could you see that going in terms of the lack of libraries being as efficient and as effective and accessible to the average working person, who has maybe no other means of getting that information, if things continue down the road they are? What's the tie-in between that and the Employment Standards Act and the rest, quite frankly, of the labour agenda of this government?

Mr Burdick: I obviously can't speak extensively on the rest of labour's agenda with respect to this act or this government. My concern is that the library sector is, on the one hand, a very key sector for this province; on the other hand, it's under enormous pressure right now. What I'm trying to say to you, perhaps not as clearly as I could, is that this act does nothing to abate those pressures. In fact, it's going to heighten those pressures, and those pressures will probably inevitably translate into worsened working relationships. They're going to translate into things that are going to make life in the workplace that much harder. They will probably therefore translate into a less efficient workplace and a workplace that's got fewer staff, and the information age is not going to exist properly without staff who help the public somehow navigate through the enormous amount of information. That's the very real problem, that things that make the workplaces less effective are not in the interests of this government, these workers or this public.

Mr Tascona: This act essentially deals with enforcement of the act, but there is one area that deals with the minimum standards, and that is dealing with pregnancy and parental leave. Do you feel that what the government has done to clarify the length of service and what service means for pregnant and parental leave employees — do you think the action we've taken there is satisfactory?

Mr Burdick: To the best of my recollection, that was one of the more positive aspects of the act. I don't recall having a problem with that, but I stand to have those comments reviewed in light of what's in the OFL or the CUPE briefs.

Mr Tascona: Certainly that's what they in fact do — they improve the rights of those individual employees — so I'm pleased to hear that.

With respect to reprisal for an individual employee who exerts their rights under the act and the limitation period, the facts really would show that if someone is disciplined or terminated because they exercise their rights under the act, certainly a six-month limitation period would be a sufficient period for someone to exercise their rights and say, "Hey, you terminated me because of what I did about a claim for overtime pay and I'm enforcing my rights," because the majority of the rights are exercised within that six-month time limitation. Were you saying that or do you mean something else?

Mr Burdick: No, I'm not unsaying that. Also, you should be mindful that many problems under the act have to do with continuing violations, and workers will be rightly concerned about that. In other words, it isn't just something that happens one time and it's over and done with; it may be a long-term situation that requires the employee waiting a little bit longer to make sure they've got everything in place. In terms of the reprisals, I'm sure you're aware, as I am, that it can be very difficult to show that an employee was disciplined or dismissed solely because the employer is taking action against them, solely because they used their rights. The employer, 99 times out of a 100, will get up and say: "That's not really what's at issue here. What's at issue is that this employee was a problem."

Mr Tascona: But nothing has changed under the act where the onus of proof is on the employer, and in fact there's no change with respect to the two-year time frame from when an officer has to receive the complaint to actually issue the order. There's nothing changed in terms of the investigation process, so that's another safeguard that's been put in place.

With regard to your general comments about the library workers in particular, and being a representative involved with CUPE, is the concern you have in the library sector with respect to the degree of professionalism or the level of human resources expertise that's a problem in the library field?

Mr Burdick: It's not so much a problem, in my view, with the level of expertise or the quality of the staff. The problem is all the pressures I indicated before are going in a particular direction, and the direction they're going in means that most of the time now staff are not able, because of operational pressures, to use the skills and training they have. The cases are endless where our people at a public reference desk cannot give the public

the service that they have been trained to give, that they want to give. They have got to run people through far too quickly, and the reason for that, I'm sorry to say, is because much more attention has been paid to technology than has been paid to staff. Our employee populations are dwindling, our technology in most cases is increasing, but the technology is simply not filling the gap.

Mr Tascona: Maybe we should be reviewing the Public Libraries Act then.

Mr Burdick: I understand there's a lot of interest in that.

The Chair: We've run over our time here. Thank you, Mr Burdick. We appreciate your taking the time to come before us here today.

1510

SUPER FITNESS TELESWORKERS SUPPORT GROUP

The Chair: Our next group up will be the Super Fitness Telesworkers Support Group. Good afternoon.

Ms Anne-Marie Foster: My name is Anne-Marie Foster and I work for Super Fitness doing telemarketing.

Ms Aileen Joy: My name is Aileen Joy. I also work for Super Fitness doing telemarketing.

Ms Foster: I have three children: 16, 12 and one soon to be four years old. To tell you a little about what led me up to Super Fitness, a bit of my brief background, four years ago I left an alcoholic, abusive man after 14 years of marriage, went to a shelter, went for counselling for a year and half, went into my own apartment with no furniture or clothing because he destroyed it. Struggling, being a single parent, when I did leave my ex-husband, I found out I was six or seven weeks' pregnant, which I did not abort because I'm against abortion.

I was struggling with three kids. The government — Harris — as you know, had cut \$351 off my cheque per month, being a single mother on mother's allowance. It was very hard for me to be on the system because I've never been on it before and I worked, so I've learned to swallow my pride. When you have children to support, there's not much you can do.

After you did the cutback, I found myself very hard. I started going to food banks two times a month. I know Tsubouchi is saying tuna, but my kids don't like tuna, so what can you do? I'm sorry; I'm not trying to be sarcastic. I'm very annoyed at the way the government is handling people on the system. I know there are people who do abuse it and people and who don't, like me. Right now I'm taking stress and anti-depression pills to deal with all the problems.

As of a year and two months ago, my son, who was then two and half, my youngest one, I had enrolled him in day care for subsidy. I was still waiting after three years to get back on my feet, to get out in the workforce and get a job. I know there are single parents who have children who are not aware that one day you could wake up and your child could be very ill. Social services is telling me right now not to work full-time, to stay home and take care of my child. Meanwhile, I'm cut \$351. Some of his medication is not covered. I have to find some means of making ends meet.

I did call different companies from home, because I couldn't afford TTC, to try to work part-time. There's no hiring, so there are no part-time jobs that I'm aware of, anyway. I tried to do my best. I found out about my son. I was hoping that he would get into day care so I could go back to school and go out in the workforce. He became ill with kidney problems. He just woke up one morning and he became sick. He's been in and out of Sick Kids Hospital for a year and two months now. I'm sorry; this is hard for me. I'm trying to make ends meet, to go back and forth to the hospital, and my drug card does not cover some of his medication. I'm trying now to get some of it covered, but I'm not getting any hope.

A girlfriend of mine told me about Super Fitness and this and that. She worked for a week and told me about the company. You could work from home doing \$12 an hour and \$10 per client you get involved into Super Fitness, becoming a member of their club. Of course I chose the \$12 an hour, because I know that I have the ambition to work. I'm not one of these types that are going to just sit back and be on the system and abuse it. I really do want to work and I really mean that.

I put in 180 hours for this company, working for \$12.50 an hour. They owe me \$2,340; that's with vacation pay on top. It's been a year now and I just feel like I'm not going anywhere with this company and this government. I don't understand why it's taking so long. I worked hard for that money. My children need new beds. I need money to cover my child's medication. I was promised this money.

Every time I called this company at the beginning there wouldn't be somebody to answer the phone. After many people complained, he wouldn't return the calls back. They were saying the cheque was in the mail. I have a lot of ambition in me to be able to get work. If I get my foot in the right door, one of my dreams and my goals is to get off the system, especially at the amount that the government is taking off me. It's very hard. I've applied for handicapped benefits for my son; I'm not getting anywhere with them either. Sick Kids is sort of in disbelief that this is happening to me, but it is.

All I want is just to get paid. I don't want this company to get away with this, and right now I feel they are getting away with it. I'm almost to the point where I'm giving up hope, where nothing's going to be done. People out there need to be aware, especially a single parent with children, that you can wake up one morning and have a child who's really ill, in and out of the hospital, and end up quitting your job. Then what are you going to do?

I worked hard for this company, and when I started working for the company I felt really good about myself and it did boost my self-esteem because I thought this was some kind of income that's going to come in to help me. I would have stuck with this job today if they were paying me all the time and stuff like that. This would have worked out fine with a sick child.

I'm sort of in disbelief still that this can go on here in Canada. I'm still in disbelief that the government is taking so long for this to be settled. My children need clothing just like any other children out there and stuff like that, and as you're aware, when you're on the system you can't always afford all these extra things. My

children are not — the other two are not young, they're teenagers, and things are expensive out there.

I think these companies need stiffer laws. They need to be fined maybe much higher fines. I don't understand why this company has gotten away three times doing this to the public, to people, whether it's the consumer or people working for this company. I'm struggling being able to deal with this. I'm even seeing a psychiatrist to deal with all these problems and issues I have. It's very hard. A lot of people think that when people are on the system, they're at home and this and that. Maybe some of them don't care if they get off the system or not; I do. I want my children to grow up knowing their mother is doing something with her life, not being on welfare for the rest of my life. There's no way I could even do that.

All I'm asking is for everybody out there who's listening and the public to be aware of these kinds of companies. I did not know I was going to get myself into this. I'm just, if I can use the word, desperate. Yes, I'm desperate. I have three children to support and it's hard. It's not easy being a single parent on the system. Right now it's very hard because they don't give you the money for TTC to look for work, and day care is so slow and you have to wait so long. I really don't know what to do. I'm just at the end of my rope here.

I just hope this can get settled as soon as possible. I've learned a valuable lesson. I'm almost afraid to work for companies at home because of what had happened to me with the case of Super Fitness. I really hope the politicians and the MPPs and the government can really put their foot down on companies and please don't let them get away with this. I don't enjoy being on medication and being under stress, but this has put me under even more stress and I really don't need this.

I'm here to speak on behalf of everybody who's working at home with companies doing this and getting away with it. Whether you're working at home or in a company or in a factory, you're still working. The bottom line is you're still trying to make an income coming in.

Like I said, I worked every chance I could while my son took a nap during the day. Days when he didn't take a nap, when my older daughter came from high school and finished her homework, she would watch my son while I went into my bedroom and did the telemarketing. A lot of the times when I worked with Super Fitness, they gave you this certain phone number that you phone in and you have to put a password in. They gave you logging sheets. You'd call people up one at a time. I did everything that they asked me to do. They called me. Even when I had to get a tooth removed and stitches, I still worked because I needed that money. All I'm asking is, I really need the money, I worked hard for it, and I'm really disappointed. I'm going to be more disappointed and have no faith in this government if they let companies like this get away with this. This just can't happen.

Ms Joy: I don't want to get too personal except to say that I had a strong background in hospitality for 22 years and I thought that was the worst you could do until I ran into telemarketing. I started telemarketing in 1990 because I was hit by a car for a second time in 1989. I died; I couldn't work with the public any more. I went to

part-time work. I fought every day not to kill myself. I get back on track, I worry whether or not I'm going to still have psychotherapy twice a week. It took one year of shrinks telling me different things; it took a whole year to get a correct diagnosis. I'm only doing this because I can't do anything else. I never thought this is where I'd be.

In regard to Super Fitness, I'm one of the lucky ones. The main attraction was working from home. That drew me. I agreed to work 20 hours a week. The pressure was to work more hours, and that set off warning bells because until you have a proven track record, no telemarketing company is going to give you more hours.
1520

I worked from August 28, 1995, until September 8, 1995. I quit for several reasons. First, when I called in to inquire how many people were taking advantage of their free membership, I was told they couldn't tell me. They're computerized, but they can't tell me. The warning bells went off because in telemarketing the pressure is per hour — every hour, what I'm bringing in. If you don't bring it in, you're fired. They don't give you the time.

The second concern was my contract. On my contract I could not find the company name anywhere, whether it was Super Fitness or whether I was working for a telemarketing company. Also, they mentioned online time. It was unheard of. They said I'd only be paid for actual talk time spent on the phone, not taking into consideration wrong numbers, answering machines, busy signals. Most of it's spent with wrong numbers, not talking to an individual.

The other thing was no cheque until you earned a minimum of \$150. I thought, again, is that legal? But I thought, well, if they've got it in the contract, it must be legal.

They said the company did not specify the hours of work. That's untrue. Super Fitness determined the hours that I was going to work.

My claim is very small. It's only \$347.74, including vacation pay. After informing Super Fitness that I had quit, I was told I would receive a cheque at the end of September. I spent two months trying to collect and got nowhere until the switchboard at Super Fitness was so sick of my calls they referred me to DFD telemarketing. I found a DFD Telecommunications in the phone book. When I contacted them, I thought it was the man who hired me from Super Fitness. He would not identify himself and denied that they did any telemarketing.

I called the Ministry of Labour and I was in for a shock. When I called, I was told they could not do anything; normally they could not do anything for me. The only reason they could do anything this time was because they'd received a number of complaints from Super Fitness: Come down and file a complaint.

I ran into somebody that was familiar with this class action through Parkdale. Because I wasn't happy with the response from the Ministry of Labour, I contacted Parkdale legal aid. They put a claim in for me in November. If it hadn't been for the non-stop commitment and support from Parkdale legal aid, and later on with the involvement of the Ministry of Labour, I would have walked away from this back in November.

I'm curious. If this had happened now, after Bill 49 was in place, would my claim be invalid because the amount is so small? I'd like to know what you're going to do in regard to Super Fitness.

The Chair: Thank you. If that's the end of your submissions, we have two minutes left. The official opposition; we ended with government members last time.

Mr Hoy: Thank you very much for your presentation. The personal ones that I've heard today certainly have much more impact and I think vividly show what can go wrong in a situation where you have a poor employer, one that doesn't have maybe any standards. Yours is a case study of things that can go wrong when people are not upfront about what they will pay you, how they will pay you, when they will pay you. So I appreciate the knowledge of the history of your background as it pertains to some of the aspects of this bill.

I was mentioning at the break to someone in the hallway that the more personal aspects of committee work are much more enlightening. Other people look at a bill and are looking at words and what they mean to them. I appreciate your presentation.

The Chair: Actually, there are a few seconds left. Mr Christopherson, do you have a brief question?

Mr Christopherson: I'll make two very quick points in just a couple of sentences. One is that what we're seeing is very clear evidence of the government's intent to push down the value and the price of labour. Overall, if you take a look at what the agenda of this government does, it's to lower the value of labour in this province.

Given the fact that they've slashed by 22% benefits to the poorest people in our province, that's exactly the sort of folks that are going to be pushed into accepting whatever's available. If the rights supporting those individuals are lessened, you are very much pushing people more and more into poverty. Whether you're doing it deliberately or not, you have to answer for yourselves. That is the result.

My last point would be that I'd like to hear, if there are remaining seconds, from the government members what they're going to do about it.

The Chair: We've actually gone over the time and I don't know whether it would be fair to ask, if the case is pending. Mr Christopherson, as a former minister I think you would know full well the consequences of dealing with matters before any kind of tribunal. I think what might be more appropriate —

Mr Christopherson: A meeting at least —

The Chair: No. What might be more appropriate is perhaps if you could direct the specifics of your case to the minister, and we can give you the address here this afternoon.

Ms Joy: The Ministry of Labour has told them to pay up, and they have refused and they have taken it to the adjudicator. The people who settled with Super Fitness for the claims from \$250 and under, who made a private settlement that they were supposed to pay, they have not paid. They have done everything to dishonour the agreement.

The Chair: Aside from highlighting the case with the minister in terms of ensuring that the adjudication process

moves along quickly, I think that's probably the best we can hope for at this stage.

Ms Joy: That's the best?

The Chair: We certainly wish you well, but I would suggest doing that to alert the minister directly to the details of this case and to ask for her oversight to ensure there are no further delays in the prosecuting. I don't mean to go into the details of the bill, but perhaps one of the other members might chat with you outside and let you know the significance of what would happen if in fact this bill was passed in terms of helping to enforce your existing claim.

Ms Joy: Thank you.

The Chair: Thank you for coming in before us here today. We appreciate you taking the time. A very courageous presentation from both of you.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1750

The Chair: Our next group up will be the Canadian Union of Public Employees, Local 1750. Good afternoon to you both. Again, for the umpteenth time today, we have 15 minutes for your presentation. You can divide that as you see fit between presentation or question-and-answer period. Would you be kind enough to introduce yourselves for the benefit of Hansard.

Mr Nick Milanovic: Certainly. My name's Nick Milanovic and I'm a lawyer for the Canadian Union of Public Employees. Sitting beside me is Carol Haffenden, vice-president of the Canadian Union of Public Employees, Local 1750.

Today we're here to address one aspect of the changes to Bill 49. What we have for you today is a very short presentation, and we hope the committee will question us on the brief that's just been circulated to you, as we would like to clarify some matters and I'm sure the committee has questions of us.

Local 1750 is one of 2,650 locals of the Canadian Union of Public Employees, the largest trade union in Canada. Local 1750 represents 3,400 employees at the Workers' Compensation Board. These members include clerical workers, administrative workers, industrial workers and some professional employees. Local 1750 represents members across Ontario located in many major towns and cities across the province. It has represented workers of the WCB for some 21 years and its membership has continued to expand over that period.

1530

Before I start into what I'm sure the committee has heard today, a round of criticism, the union would like to acknowledge two minor, in its view, yet positive changes to the Employment Standards Act. The new act would provide vacation entitlement of two weeks per year, which would accrue whether employment was actively worked over the period or whether there was an absence due to illness over that period. As well, the amendments to the act provide for seniority and service during pregnancy and parental leave and ensure that all employees are credited with benefits and seniority while on leave. In the view of the union, it's a positive step and we feel we should acknowledge it.

Today in my short amount of time, what I want to avoid is talking past each other. We acknowledge that there are some minor positive changes. We applaud that. However, we'd like to focus on a particularly significant aspect in the union's view of the changes to Bill 49, and that concerns the changes to the collective bargaining structure under the act, what issues might be collectively bargained.

Section 3 of the bill and section 4(2) of the current act deal with the collective agreement overriding statutory provisions of the Employment Standards Act. This would have the effect of trade unions and their counterparts, employers, being able to bargain substantive aspects of employment standards law and incorporating them into the collective agreement. In the union's view, this is a road it would prefer the government didn't travel.

Perhaps I can begin with where the law has come from and where we are now. Beginning in the 19th century, this Legislature, along with other Canadian legislatures, began to legislate specific areas of employment and regulated terms and conditions of work relating to a variety of substantive issues, beginning with health and safety, children's and women's labour. Eventually the various statutory mechanisms that were out there and located in various pieces of legislation were brought together in 1968 to create the current act.

From that point forward the current act developed to the point where one basic truism resulted, and that was that most workers in this province had a basic universal floor of rights. That is, no one could negotiate out of the basic standard of rights that were provided for employees. Every worker in the province that was covered by the act was entitled to the same vacation entitlement, the same severance entitlement and the same determination entitlement as every other worker. There was a universal floor from which all employers and all unions or individual employees could bargain but never go below.

This act seeks to change that regime in a significant way, and that forms our main concern today. I'm keeping an eye on the time. Currently no trade union and no employer may agree to standards that fall below the various standards that are contained in the act. Under the proposal, unions and their employers may negotiate specific changes if the rights that are dealt with, and there are only a certain number of rights, confer "greater rights" than the act provides.

For the trade union, that seems to be rather ambiguous language. Determining how one juggles overtime pay against vacation pay and other rights in the collective agreement, to assess whether rights are in fact greater than what the statute provides, is at best an ambiguous process and at worst impossible to determine other than that a hearing will eventually be held under the grievance arbitration system of a collective agreement to determine that matter. How an adjudicator in that position will determine what rights are greater is left unaddressed by this act and that is a major concern.

For the purpose of clarity, the issues that can be negotiated under the bill, section 3, are severance pay, overtime pay, public holidays, hours of work and vacation pay. That puts Local 1750, which represents people at the Workers' Compensation Board, in a precarious position.

The government has signalled in other places that it is prepared to reform, if you will, the workers' compensation system. Employees at the board are concerned that the rationalization of administrative services will mean that their employer will have to undertake some drastic changes, and within those changes, they see this bill as fuelling concessionary bargaining because for the first time employers will be able to negotiate below the standard. For instance, if the board in its wisdom decided they wanted their employees to work longer, they could negotiate a change that provided for working hours that are in excess of the current standards with no necessary change in other conditions in the collective agreement because this collective agreement exceeds the level of the Employment Standards Act, and in many situations, many trade unions, whether it be this one or another, will have exceeded the Employment Standards Act over a number of years of bargaining.

What this act does is give an incentive for employers to take concessions from their workers without giving them anything necessarily in return, and given that this board is going to restructure itself, this union sees that as likely. As well, given that this employer takes its direction from the government, there's a very real and serious concern that direction will be given, either explicitly or otherwise, to undertake those changes. This will simply mean worse working conditions for the employees at the WCB. This act does nothing to improve the conditions of employees at the board.

There's another potential implication for a specific group of employees at the Workers' Compensation Board, and those are temporary workers. All estimates are that this is about 200 people at the board out of the 3,400 we represent. Temporary employees under the current collective agreement are not entitled, as in many different situations throughout the province, to the same rights that a permanent employee is entitled to, their rights aren't quite as strong as permanent employees, so they are going to be subject to an Employment Standards Act that necessarily makes it more difficult for employees to sustain their rights. Given that they're temporary employees in the first place, they have a natural reluctance to rock the boat because they want to become permanent employees. Given the current labour market, that's understandable.

This act will give an incentive to employers to use temporary employees to work longer work hours because somewhere else in the collective agreement they have a higher standard than the current act allows for and presumably, although we don't know for sure, they will have greater rights than under the current Employment Standards Act.

Inevitably, because this act puts more issues on the collective bargaining table, there will be an increase in industrial strife. A labour relations peace will not necessarily be maintained in the face of workers who have to fight for what before was a legislative right. That puts workers in a very difficult situation of accepting an offer and letting go employment standards rights that have been the basis of their relationship with the board for quite some time or going out on strike to fight for rights they have had since 1968. This committee and the government should take note of that very real possibility.

1540

The other implication that is I think obvious for the workers at the WCB, given the restructuring that will be going on at the WCB — and Cam Jackson's report is out and the government will be considering the various options therein — is that employers, and specifically this employer, if they cannot get the concessions at the bargaining table, will look greater and greater to contracting out as a solution to lower their labour costs. Traditionally, we know in the labour movement and we know in the New Democratic Party that contracting out means savings brought on, for lack of a better term, the backs of the workers because they're not traditionally unionized jobs with higher wages. Any savings that are accrued to the government and to the public at large are a result of a transfer of a higher-wage job to a lower-wage job.

Again, this will lead to industrial strife because the workers at the WCB will simply not sit back and see their jobs contracted out, and with the change to Bill 7, the Labour Relations Act, successor rights do not attach automatically to those jobs so that the trade union won't exist any more and it is an incentive for people simply to walk out. It's our submission that this aspect of the changes specifically — I think I'm out of time — should be repealed.

Alternatively, if the government is not up to that task, it should consider making the changes in the aspect concerning greater conferring of rights specific, so that we might judge monetary rights against similar monetary rights or mixed rights against mixed rights or some sort of system for an adjudicator to balance those rights and obligations so that the parties involved in collective bargaining understand where the process is headed and have a greater certainty as to how their agreements, once they're resolved, will actually be implemented. Otherwise, there will be a great flood of litigation to determine what greater conferral of rights under the act actually means.

That ends our submission and if there's any time for questions, we would appreciate it.

The Chair: Thank you. There's one minute and 45 seconds left and since the last question was from the government side, Mr Hoy, if you have any questions.

Mr Hoy: Thank you for your submission today. I chatted with a fellow the other day who thinks that Ontario might some day be open 24 hours a day, every day of the year. We'll be working, working and working. In the absence of minimum standards and some other things that are happening, some by the wishes of the public — we are open seven days a week and Christmas and so on now — maybe this chap isn't too far off and we will be commerce 24 hours a day, 365 days a year. Do you feel that the lack of any kind of a minimum standard could lead to at least a demand on people to work, we'll say, excessively, whether they're unionized or non-unionized?

Mr Milanovic: I hope that individual doesn't have to work 24 hours a day, 365 days a year, but it's our view certainly that without a defined universal standard, that's exactly what will happen. The committee should understand that there are very real implications of that. It means that people who tend to work more as a result of

these changes traditionally have more industrial accidents, and that has an impact on this local particularly because they claim workers' compensation. We may be creating a more unhealthy, more unsafe working environment and any savings realized through this process, this rationalization here under the Employment Standards Act and at the Workers' Compensation Board, may in fact be eaten up by more and more claims because people are simply tired and have accidents at work because of that. I see this act as creating that incentive.

The Chair: Thank you both for coming down and making your presentation before us here this afternoon. We appreciate it very much.

My apologies to the government members. Actually, the last question before that had been Mr Christopher-son's, so I am behind in my times.

Mr Milanovic: Mr Chair, we have time to sit and answer government questions, if you so desire.

The Chair: We'll let you catch up with the next presenter.

Mr Milanovic: I'll be outside in the hall if you really want to know.

ONTARIO HOTEL AND MOTEL ASSOCIATION

The Chair: Our next presentation will be from the Ontario Hotel and Motel Association. Good afternoon, Mr Seiling.

Mr Rod Seiling: My name is Rod Seiling. I want to thank you and your committee for the opportunity to appear before you today. I'm president of the Ontario Hotel and Motel Association and executive director of the Hotel Association of Metropolitan Toronto. Collectively, we're the largest accommodation and hospitality association in the province, with over 1,000 members.

Employment standards reform is important, and therefore we support the government's initiative to fix it. Bill 49 is the first stage of this process and we look forward to the extensive consultation process that we understand will precede the introduction of the second stage of this reform package.

What this bill does is help to relieve the complexity and time involved for all concerned. We would hope and suggest that ultimately all legislation and regulations related to work and employment will come under one act. This would be a forward step in bringing clarity and fairness to the workplace.

Bill 49, in our estimation, and supported by our advisers, does not alter minimum employment standards in Ontario. What the legislation does is make technical changes to the act. These changes are aimed at improving administration and enforcement of employment standards, as well as reducing ambiguity and simplifying language. We also see this bill signalling a significant reduction in the government role in administering and enforcing the act. I might add that we also believe it will allow the ministry to utilize its resources on those it deems as important issues.

Our analysis of the proposed changes is as follows:

Act enforceable through collective agreements: The bill specifies that obligations under the act will be enforceable through collective agreements, as if the act were part of

the collective agreement. Employees covered by collective agreements will not be permitted to file complaints under the act without the permission of the director. In essence, the grievance and arbitration procedure will replace enforcement through the administrative machinery of the act. Powers of arbitrators with respect to claims under the act will be expanded to include the powers of employment standards officers, adjudicators or referees under the act.

Parallel proceedings in court and under the act prohibited: The bill prohibits an employee from commencing a wrongful dismissal action in court if he or she files a complaint claiming termination or severance pay under the act. Similarly, where an employee files a complaint under the act for wages owing, breach of the building services successor provisions or the benefit provisions of the act, a civil action seeking remedy for the same matter is prohibited. These restrictions apply even if the amount owing exceeds the maximum for which an order can be made under the act. Civil actions are permitted, however, if the employee withdraws the employment standards complaint within two weeks after filing it. Parallel to the foregoing restrictions, an employee cannot initiate a complaint under the act for the specified matters if a civil action covering the same matter has been commenced. Effectively, the bill will require employees to choose whether to sue in court or to seek enforcement through the act.

Increased flexibility for provision of greater benefits in contracts: The bill will make it easier for employers to establish that they have provided greater rights or benefits than are required by the act, and thus obtain exemption from certain provisions of the act. When a group of collective agreement provisions — for example, severance pay, hours of work, overtime, public holidays and vacation — are considered together, rather than individually as in the past, the collective agreement will prevail if it provides superior rights. In addition, statutory and regulatory provisions, as well as provisions in oral, express or implied contracts, will prevail over an employment standard if they confer a greater right than is provided by the employment standard.

1550

Service during pregnancy and parental leave: The bill requires the length of a employee's pregnancy or parental leave to be included not only in determining seniority, as is required by the current act, but also in determining the length of service for all rights except for the completion of the probationary period. Thus, all rights in employment contracts that are service-driven will continue to accrue during the leave. All employers should review their contracts of employment — we support this — to determine the impact this will have on their current employees.

Vacations: The present vacation of at least two weeks upon completion of 12 months of employment is amended to apply whether or not the employment was active employment. The pay during such vacation must not be less than 4% of the wages, excluding vacation pay, earned by the employee in the 12 months for which the vacation is given. This clarifies and simplifies the existing provisions in the act.

Maximum amount of orders: Employment standards officers will not be permitted to make an order for an amount greater than \$10,000 in respect of one employee, with the exception of orders relating to breach of the pregnancy and parental leave, lie detector, retail business holiday and garnishment provisions, and termination and severance pay in connection with breaches of such provisions. Arbitrators will not be subject to these restrictions. The bill provides for regulations prohibiting officers from issuing orders below the level specified in the regulation.

Collections: The bill sets out mechanisms for the director to use private collection agencies to collect amounts owing under the act. This will provide the ability to contract out a function that is now performed within the ministry. Collectors will be authorized to agree to compromises or settlements of claims if the person to whom the money is owed agrees, provided that it is not less than 75%, or such other percentage as may be prescribed, of the money to which the person is entitled, unless the director approves otherwise.

Compromise of rights under the act: Compromises or settlements respecting money owing under the act will be binding once the money stipulated in the compromise or settlement is paid, unless the arrangement is entered into as a result of fraud or coercion. In the current act there is very little ability to contract out of the act's requirements. Employment standards officers will be given additional authority to settle complaints without making a prior finding of what wages are owing.

Limitation periods: In a prosecution or proceeding under the act, no person will be entitled to recover money that becomes due to the person more than six months before the facts upon which the prosecution or proceeding is based first came to the knowledge of the director, subject to certain exemptions. In the current act the limitation period is two years.

Review of orders: An employment standards officer will be deemed to have refused to issue an order if a proceeding is not commenced within two years after the facts upon the refusal is based first came to the knowledge of the director. Employees may request a review of an order or a refusal to issue an order, in writing, within 45 days. The director has the discretion to extend this time limit in certain circumstances. Certain orders may be reviewed by way of hearing. In the case of employers, application for a hearing is dependent upon paying the wages and administrative costs required by the order.

Administrative changes: Complaints under the act will be filed in either written or electronic form. Employment standards officers will be able to obtain copies of documents kept in electronic form. Certain changes concerning the service of documents under the act are also made.

In conclusion, we support Bill 49 as it signals a progressive change in employment standards in Ontario. It is not reducing minimum standards. We are not, I want to clarify, seeking a reduction in benefits. We are good employers and want to ensure our employees are treated fairly and receive all that is their due.

I want to conclude, but I thought it was important that we go through our understanding of the act, given that we've seen so much rhetoric out there about what this

bill is or isn't and want to be on the record as to what our understanding of the bill is. Thank you very much for this opportunity.

The Chair: Thank you, Mr Seiling, and you've left us a generous amount of time for questioning. To redress the imbalance, I'll give two fourths of the time. Since we have eight minutes, we'll have four minutes of questioning for government, two minutes to the Liberals and two minutes to the NDP. Satisfied?

Mr O'Toole: Mr Seiling, I want to put on record respecting your presentation that you've clarified that in the section dealing with increased flexibility for provision of greater benefit in contract; I think it's on page 3. You're clear there. It says that when they're considered together, "rather than individually...the collective agreement will prevail if it provides superior rights." The minister indicated this morning that this section of this bill would be moved to phase 2 of the review of the employment standards, but her intent was to ensure that the outcome of the collective bargaining process would ensure superior rights. If I was to read section 3, it says, "A collective agreement prevails over section 58 and parts IV, VI, VII and VIII of the act if the collective agreement confers greater rights...." That's pretty straightforward. What I'm trying to do is get on the record very clearly is that the minister's intention and the government's intention is to avoid the duplication and to empower the workplace participants — that's the union and management — to come with the best adjustment to the working day, hours of work and other conditions as the changing world of work around us evolves. Is that kind of workplace empowerment something your industry is looking for?

Mr Seiling: Very much so. We're very pleased. I want to be very firm that we are not looking for a reduction in standards, nor would we support that, but we see this as a progressive step in allowing our employees to negotiate benefits on their terms. I make a point that because we're in the service industry we have various times of the year where things are very busy or slow, and right now we can't give things legally to employees who'd like to have them. Under this bill we are able to bring some flexibility, keep our people employed full-time and give them a better living in our view and yet maintain the service to our customers, because without customers none of us has a business, nor do employees have jobs.

Mr O'Toole: The point I'm trying to make is that whether it's in the computer electronics area or the libraries, as we know, through technology the world of work and use of recreation time and leisure time and the whole standard of living are certainly not what they were some 20 years ago. This act needs to be reviewed to allow the workplace participants to be the deciders of the balance in the workplace. I think that's a reasonable expectation and I think that's the intent of the minister. I've heard you say the same thing, so thank you for that response.

Mr Tascona: Thanks very much for your presentation, Mr Seiling. I note under the maximum amount of orders — I want to get your opinion on this — with respect to the cap of \$10,000, this does not apply with respect to termination and severance pay if it goes over the cap. What do you think about that?

Mr Seiling: Given today's times, it's fair and reasonable, but again, one of the things that we're most pleased about is that this bill seems to end what I would call some of the double jeopardy where, "If we're not successful here we'll go there, and if we're not successful there we'll go there." An employer is on the hook for years upon years in not knowing where they are, and so is the employee. We think it's not fair to either side to be playing this game of double jeopardy. If you have a problem and it's a real problem for both sides, it should be dealt with at one place or another. You can't go fishing and, "If the fishing's better in this hole than the other hole, we'll keep on moving till we find a bite."

Mr Tascona: That's been your experience, that it has been double jeopardy with termination and severance pay claims?

Mr Seiling: It has been. It's unfortunate that I'm unable to bring with me an associate who is head of our — we have a sister organization called the Human Resources Professional Association, and one of their biggest complaints is that they're tied up in red tape and regulatory dealing with these issues. If it's not dealt with in one, then they go someplace else and then they go someplace else. They believe they dealt with it fairly and they want some balance back in the system and say, "We want to deal up front." Certainly there always will be a bad apple somewhere, but we believe that 99.99% of all the people we represent are good employers. They want to resolve it fairly one time and one time only, and they want to make sure it's done in a just and fair way.

Mr Tascona: What would you think about electronic filing of payment of orders to pay?

Mr Seiling: The way the world is moving, you can now file your income tax that way, and as the world goes forward more and more people are going to be doing things electronically. It will become a way of life. I think that as this act is revised we should be looking more towards the future, not towards the past.

Mr Tascona: Would that be the same with respect to filing an appeal to order to pay?

Mr Seiling: I don't see a problem, but again, I believe at some point along the way, if someone needs to see a person, that should be there, but I don't believe we should impede it by saying you can't do it. As I said, it's progressive and we should be looking to where the world is going, not to where we've been.

Mr Hoy: Thank you for your presentation. I would agree that probably most employers are law-abiding and socially responsible people, but for those who are not I want to talk about the limitation period. It was suggested today more than once that the six months is actually too short for people to move from one workplace to another because of reprisals if they were to start an action within the six-month period rather than the two years. Do you have any consideration for that in mind, an opinion?

1600

Mr Seiling: I don't see it as a problem because I think that in today's world moving from one job to another is accepted. In days gone by where you started with a company and worked all your life with a firm, when you changed jobs there was always something untoward that had happened. That's not the case today.

I think the only time there is a problem is if there's been fraud or something untoward happen in the workplace where somebody may be trying to hide something. But I don't believe in today's workplace, from the employer or the employee side, that changing jobs is a problem. If you've got a problem, surely in six months you know whether you've been done in or aggrieved or not satisfied and will take appropriate steps.

Mr Christopherson: Thank you for your presentation. It's good to see you again. I was interested in your statement, fourth paragraph of the first page, where you state that in your estimation the bill "does not alter minimum employment standards in Ontario."

I was wondering and I'd like to hear how you feel that putting a cap on the maximum amount to claim, as well as a minimum threshold to cross, and reducing from two years to six months the time period in which a worker can make a claim is not losing a benefit. Whether or not you agree that it's a benefit that should be lost for whatever reason, I just don't understand the commonsense thinking that there is now a cap and a minimum threshold and a reduced time period where there wasn't one before and yet you're comfortable saying you don't think this alters minimum employment standards. Could you help me understand that?

Mr Seiling: I don't profess to be a total expert in this area, but we've had people who are experts in this area look at it and I am, I guess, restating what these people have told us. I can only restate what I've said, that we do not believe this bill represents a reduction in minimum standards.

Mr Christopherson: I wasn't playing technical legal gymnastics.

Mr Seiling: I understand that.

Mr Christopherson: I'm not a lawyer either. I was merely asking just from a commonsense point of view that if you looked at this and there's a cap where there didn't used to be one and you have to cross a threshold where you didn't before and you've lost a year and a half in a time period that you once had, how that could not be construed in some way or another as some kind of minimum right lost.

Mr Seiling: As Mr Tascona was just saying, you can go to a threshold in court. I think there are ways and means to recover those things. As I said earlier, I don't believe anyone today wouldn't know within six months whether they have a case. You can go over the \$10,000 limit in court, so I don't think anything's been taken away from you. I go back to what I said: We do not believe this bill represents a reduction in minimum standards.

Mr Christopherson: Do you think the bill is going to make a difference to you and your colleagues in the industry?

Mr Seiling: We think it will make a progressive step forward, not just for the businesses we represent but our employees as well, because it's going to give us flexibility to allow us to offer our people better employment. Hopefully we'll see where we'll be able to give them the things that they want to have at times and periods when we'll be allowed to give it to them, have them work when they want to work and when we need them to

work. It's going to give us flexibility to deal with those things and is something we need to be able to deliver service to our customers.

Mr Christopherson: How do you think you would square that with the minister who's said that these are only minor housekeeping changes? If you feel it's going to make a big difference, and there are people who think those differences are very controversial, how does that square with the minister saying these are only minor housekeeping changes?

Mr Seiling: We believe these are minor in the sense that we believe the discussion paper coming will shed greater light and greater flexibility and reforms, because this bill represents what the workplace was, not what it is today and where it will be in the future.

Mr Christopherson: I disagree with most of it, but I appreciate the dialogue.

The Chair: Thank you, Mr Christopherson. We're over our time. Thank you again, Mr Seiling. We appreciate you coming and making a presentation here this afternoon.

Mr Seiling: Thank you.

The Chair: Is there anyone here from the Canadian Union of Public Employees, Local 136? I didn't think anyone had checked in.

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES

The Chair: In the absence of that local, the next group will be the Ontario joint council, the Union of Needletrades, Industrial and Textile Employees. Good afternoon to you both.

Ms Pat Sullivan: Good afternoon.

The Chair: We have 15 minutes for you to use as you see fit, divided between presentation and question-and-answer. I wonder if you might introduce yourself for the benefit of Hansard, please.

Ms Sullivan: My name is Pat Sullivan. I'm the Ontario director of the Ontario joint council of the Union of Needletrades, Industrial and Textile Employees. The result of that union is from a merger of the former International Ladies' Garment Workers' Union and the Amalgamated Clothing and Textile Workers Union. We merged last July 1 and we're now one union.

With me is David St Louis, the assistant to the director. We have made copies available to the committee of our submission, so I don't want to read through it and take up the 15 minutes. It would probably take longer than 15 minutes if you wanted to read through it.

I want to address the issues and the concerns affecting the membership that I represent, primarily in the clothing industry. Coming before government committees in the past, with the changes in the labour laws that have been before us in the last year, this is just another stage of taking away rights from workers who really need the type of legislation we've had and to be able to improve on what's there. I think these are regressive changes to this legislation. Although I've heard the minister say that this is just slight housekeeping, that it's not really cleaning out and making major changes to the legislation, if I did housekeeping in a manner like this I might as well move

because there wouldn't be anything left in the house. That really greatly concerns me.

I understand also that the minister made an announcement this morning that some of the provisions that were part of the housekeeping had been removed, but they're not gone and that concerns me also. I think it's just a plot of the government to look like it's making some changes because of the presentations coming before the committee. She also states that this will come under the much larger review of the employment standards, and that gets your hair up on your back. If this is only housekeeping, these changes, and there's going to be a much larger review, what the heck is going to happen to the working people in this province?

If we go to the clothing workers in this city and this province who have been badly hit by everything that's going on, whether it be trade, free trade, NAFTA, you're starting to see the reoccurrence — whether industry wants to recognize or accept that there are sweatshops in this province, it's only going to create a bigger landslide of sweatshops. When you start to regress what they have under the minimum, bare standards and allow opportunities for employers then to reduce that, you're going to create much more of a sweatshop environment where workers have no rights.

In the past, up to five, eight years ago, you had people in this industry who were making good wages, who were getting up to \$10, \$12 an hour working under piecework, which is really pushing them with the old carrot, and working hard, primarily women, primarily immigrant workers. It also now seems to be the start-off point for students and youth getting into jobs. With the lack of jobs out there, there seem to always be jobs in this area.

We have plant closure after plant closure. In this industry you go through bankruptcies and then they open up a couple of blocks away under a new name, hire new employees with no collective agreements, just down to the minimum rights under the act. If you start to erode that act, people are going to work in worse conditions than we're getting in the Third World countries.

Then they're going to start to take off their vacations and their holidays. We have plants now even with union contracts where they're being forced to work more than 40 hours under their collective agreements. It's mandatory overtime even though the contracts say it isn't. The employer will come to you as a representative and say, "Unless we get some major concessions here, we need to have 45-hour work weeks, we have to have mandatory overtime." If you give them licence to do this under changes to the act, it doesn't take very much to see what is going to happen out there.

Seniority provisions for the people who have worked for these employers will mean absolutely nothing. They're going to have to work longer and harder. When you're working under a piecework system, for those who have had any experience with it, an eight-hour day becomes a very extreme, hard day.

I'm not concerned about GM, Ford and Chrysler to the same degree as I am about people working in textile and clothing mills because a lot of those employers are paying big and larger wages. They're not going to have a lot of impact and utilize the changes coming out under

the Employment Standards Act to the same degree as small employers, singular industry employers who are going to take advantage of it.

Every day in my working life I have to deal with employers who are saying: "We've got to be competitive. We can't compete with offshore. We can't compete with the south. We're going to have to defer wage increases that you've got. We need a 5%, 10% rollback in wages." These people in this industry, to the largest degree, are making less money today than they were eight years ago because of giving back. Now when you give them licence under the Employment Standards Act to be able to do that, it's going to be a hayride.

1610

I haven't heard one worker in this province come out and support the changes under the Employment Standards Act, whether they're in a unionized workplace or a non-union workplace. It's seen as something that's going to be an advantage for employers and a disadvantage for workers.

I think the government is going to have to very seriously sit back and look at what is going to happen. You're going to drive more of the economy to home workers, who are not covered by any legislation to any certain degree in this province, and it's going to be opened up for anybody. It'll become like a right-to-work state in the south of the United States, where you have an opportunity to work and work for whatever wages that you can get out of the employer. That scares me. I think the province of Ontario is a strong province, always been seen and recognized as the place where business wanted to be, and to give business and industry the opportunity take our standards a lot lower is a crime for the working people in this province.

I probably could go on for a couple days, but if anybody has any questions that they'd like to put to me —

The Chair: Thank you very much. You've left us just over seven and a half minutes, so two and a half minutes per caucus. Mr Tascona had his hand up first, and then Mr O'Toole.

Mr Tascona: Thank you for your presentation. I just have a question to raise with you. Presently, two thirds of the orders to pay, which is a situation where the employment standards officer has found a violation of the act and requires the employer to pay, go uncollected.

Now, for 67% of the employers that fail to pay, it's because of insolvent situations — in other words, bankruptcy. One area that we don't have jurisdiction in is bankruptcy protection. Certainly there's been talk that the bankruptcy laws should be strengthened to protect workers in those situations, and I put it to you, what can we do in terms of trying to increase those percentages? We're basically limited in what we can do with respect to bankruptcy. We can't pay for the federal government continuing not to protect workers under bankruptcy laws and we think it's a little unfair for us to be asked to do things that the federal government should basically be enforcing.

I just want to get your comments and what you think should be done with respect to insolvent employers. If two thirds of the statistics are that we can't collect

because they're insolvent, what can we do in those situations? What have you, as a union, done in the federal area with respect to bankruptcy?

Ms Sullivan: I think sometimes in dealing with a bankruptcy, no matter what you do, the doors are closed, the ears are closed. Nobody wants to listen to the bankruptcy. They're more in line in dealing with the employers who are continuing the business.

I definitely believe there has to be something done about bankruptcy. We have gone before government, we have gone before whatever avenue we've had, where we've known for a fact a company has declared bankruptcy and opened up and probably not lost one day of business. So I think there's got to be some more scrutiny. I think there's got to be some accountability by an employer before they can declare bankruptcy. You've got the chapter 12, and I'm not totally sure how it works, in the United States, but at least there's a process if a company is going to declare bankruptcy that they've got to make the government aware.

I don't see why the province can't do it, that it has to be back on the feds. There's got to be some process. An employer just can't come in and put the notice on the door and say, "We're out of business." There's got to be some accountability working with the government, and if there's a union there, working with the union or some workers' representatives before they can actually come out and say the business is gone, because in a lot of the cases, especially in the apparel industry, that's not the case. They either will get out of business and become a contractor, they will work it out of home workers. There are a lot of scenarios out there and you don't have to be a brain trooper out there to be able to figure out what's going down. It's easy enough to track to find where they are.

Mr Tascona: I know.

Ms Sullivan: Whether the government has some committee meetings to sit down and try and put something together — there's been enough history of bankruptcies and experiences that we've been through on why it's worked and why it hasn't worked, that we could do something. I don't think it's my issue to be able to try and resolve it today, because I'd only be one person with one opinion who's been facing different types of bankruptcies, but I think there's got to be some responsibility under the province.

Mr Tascona: That is a problem in your industry.

Ms Sullivan: It's a major problem within our industry, but I wouldn't want to sit there and say to them, "Swallow the changes in the Employment Standards Act and we'll try and see if we can do something with bankruptcy." Bankruptcy is not the only problem, because by changes of the different types of employment standards legislation, bankruptcies won't be quite so bad now because you've got a licence to do whatever you want anyway.

Mr Tascona: Let's just get back to this.

Ms Sullivan: I don't want to mix the two together. I think bankruptcies is a different issue that employment standards.

Mr Tascona: I'll just raise one thing, though. There have been situations with respect to employers that shut

down and the next day they open up. That happens in your industry. But recently there was a decision where the directors of the company that did that were prosecuted by the provincial government. Unfortunately it took them about four years to prosecute, and meanwhile they had operated another sweatshop and were operating somewhere else. If there was strength in the bankruptcy, we could protect the workers and that wouldn't happen, especially when you have the statistics that we can't enforce the orders to pay because they just shut down and then they act somewhere else.

Mr O'Toole: Just one or two points to reinforce that. Would you agree that there are indeed a few improvements in this current piece of legislation? I would point out to you that payment on termination has been tightened up to be paid in seven days. There are also provisions for a minimum of two weeks' vacation and protection for parental and pregnancy leave, and there are other collection provisions which we know today is in failure. Those administrative changes are indeed in favour of the worker. So do you recognize there are some? That has pretty much been stated by most of the presenters today.

I also want to just question you for a moment, and I fully agree with many of the comments you've made, that indeed there is a lack of jobs today. I'm somewhat educated in labour economics and I just wonder, do you think there are, because of globalization, things that are perhaps beyond the control of the Ontario government — I've certainly been here a year, but globalization and those issues, are they not impinging on your particular workplace? When I look at every label on every garment, you're really under siege from more than just the Ontario government. What kind of creative suggestions do you have that we should be listening to?

Ms Sullivan: I think the experience we've had as a union and representing workers is that we have sat there and worked with employers at the table recognizing that you can't just come back and say, "You can't make any changes." We understand globalization and being competitive, but we've been able to sit down with the more progressive employers, understanding that new technologies are going to be very important to this industry, to work out how we're going to work on quality or different issues like that. We've been very successful with some of the employers in doing that, and I think that's the route that we have to go.

You can't have blinders on and say, "Globalization may be going on and it may have impact on our industry," and refuse to accept it. You have to work with it. But I think you have to have the opportunity to be able to do that. Making these types of changes to the legislation doesn't do that. I think we had it working over the last number of years in committees and you're starting to see more and more of those being eroded, where you had participation, and I sit on several of those committees where it's made up of government, business and unions.

I'm working through a lot of the issues for a lot of the industries, because we don't just represent the apparel industry, we have the textile and we have chemicals and plastics and stuff like that, other industries. We sit on these committees and work it through. Unfortunately,

since the change to this government, we're seeing all these committee works just slowly eroding. The participation level is just not there; the heart of it is gone. It's because there's no sense in me talking to the business side. It doesn't matter which side you're talking to. We talk to the government representatives on there and they say: "We don't know how long this is going to survive. We don't know whether this is going to have any impact any more." So we meet with no meaning because nobody knows what kind of life is going to be there.

We sat with a lot of the manufacturers that we represent, saying, "This is good." It gives us an opportunity to take it back to the whole base.

Mr Hoy: Thank you for being here today. In your conclusion, you say that our wages and benefits do not greatly exceed the minimum standards as it is. You did say in your verbal submission that there was a time when on average, if people worked very hard, they could get between \$10 and \$12 an hour. Now you say the wages and benefits don't exceed the minimum standards. What's happening?

Ms Sullivan: What is happening in a lot of cases is that the employers come to you and say, "We no longer can pay the type of money that we're paying because of globalization and competing with other countries or the United States and be able to keep out there and bid on the orders." A lot of them are saying if they can't get into the American economy, they're not going to survive. We know which companies are surviving and which ones aren't, what they're making for the US market. But they've got to be able to compete and to compete, number one, is the quality, which is never usually an issue. They always say, coming from any side of the border, that Canadian quality is very good.

1620

The problem is the wages, the benefits. They'll come to you and say, "We can no longer continue to pay the dental," and if they're not in the luxury of being part of our benefit plan or our pension plan, those employers are saying: "We no longer can pay for the benefits. We can't do the pension contributions any more that we're doing. We can't keep paying the high wages. We have to drop the base rates." They want a 6% or 10% rollback on wages.

After a while of losing your benefits — they're slowly being eroded, your dental is now gone because they can't afford to keep paying the premiums — then the only thing they have left to attack is taking away the wage rates. It's getting lower and lower and lower, so now they're making just \$7 or \$7.50 an hour, and then they exploit them because you don't get the overtime any more because they send you home.

You start making a lot of piecework and your money gets up, they send you home for a day, and then it's calculated on a weekly basis. If you're unfortunate to be in that situation and you've worked at 115% all that week, you go home and lose a day's pay, you lose your percentage that you're making, and try to negotiate or get those things back with the employer where your piecework is calculated on a daily basis so you don't lose it if you're doing overtime and stuff. They're just constantly at you.

A collective agreement even now is hard because if you have a three-year collective agreement, it doesn't stop the employer from coming to you and saying: "We've got problems. We need your help." You either say, "No, go away. We've got a collective agreement and you're going to honour it," or you sit down with a committee of workers in the workplace and see if you can work it out. They want to keep working.

But the company doesn't hear the same complaints that we're hearing all the time, saying, "I can't work overtime any more because I've got another job that I do in the evening, because my wages have dropped," especially when you've got a lot of women, single parents and stuff like this. They're going from one job to a full-time job working an afternoon shift. We have some working midnight shifts going right into a day shift. People can't work 16 hours straight like that and keep going to maintain a standard of living, to be able to provide for their families. So it's becoming very difficult. You're always at the company's mercy because the threat is always there, "If we don't get what we need, we're going to shut down."

Mr Christopherson: Thank you, Pat and David, for an excellent presentation. I think it's interesting that the government members continue as the day rolls on to talk about the federal government vis-à-vis bankruptcy legislation when there already was a very progressive piece of legislation in place under the wage protection plan that provided, for the first time ever, as a result of our government's initiatives based on lobbying from the labour movement, the very thing that they were talking about here today and asking you, "What are you doing about it?" that provided workers with an opportunity to have severance and termination pay and wages paid and vacation that was due them in the case of a bankruptcy.

It was this government, under Bill 7, which they didn't run on — there was no mandate to do that — that gutted that very program. So I find it quite hypocritical that anyone would suggest that the unions have been less than responsible to their members on the issue of lobbying the federal government when there already was a very positive, progressive piece of legislation that you helped bring about in the province of Ontario and that they gutted.

I also would like to turn to an issue that was raised earlier in the day about the whole issue of sweatshops and what's happening with garment workers. Given time limitations, I didn't get a chance to ask the question of them, so I'd like to pose it to you. We've seen in the States the whole issue around — what's that woman's name?

Ms Sullivan: Kathie Lee.

Mr Christopherson: There's been a focus down there and your union's been active in making this a big issue in the States. How big and to what extent do we have those kinds of sweatshops here in Ontario, in your opinion?

Ms Sullivan: If you go back to the basis of LA, where they had the whole big experience where they had the 18 or something women who were basically kept in a basement in LA, that is going on here. Maybe not as prominent, but you will hear about it. They're out there.

We talk to these workers on a fairly regular basis from our union. A lot of them are immigrants, probably almost 100% immigrant workers. They're afraid they're going to get deported or they're not going to be able to get any work because of language barriers or their children and stuff like this. So it's pretty much underground, but it's there.

We raised these issues when we came before the government on the whole issue of home workers and I think on the health and safety. I think every issue that's come before any committee of the government over the last number of years, with the NDP government, with the Liberals and now with the Tories, that's always been an issue that's there.

I think it's becoming bigger and I think you're going to probably start to see companies within this province start to come out. We're not only doing it with Kathie Lee, we're doing it with Disney World, which is now doing stuff in Haiti, paying them 38 cents a day and exploiting the women and the children and stuff like this, and I think you're going to start to see some stuff coming out in this province. It's there, it's not going to go away as long as they turn an eye to it. There's a lot.

I talked to one manufacturer who went into a factory with no windows, no doors, and there were just machines you wouldn't believe in there and people working in there, and it was one of our manufacturers. If that's not an underground movement in there, I'd be surprised. It was through a wife's business that he was in there looking at purchasing and stumbled on this place going down a long laneway. He said this was just a huge building that you would have thought was empty until you got inside.

I think it's very much alive and I think it's growing. Probably in just a matter of time what you're seeing with Kathie Lee and all the other issues down south of the border, and what we're doing here is to bring the message up to this province that it's going to start to happen here.

The Chair: Thank you very much. We appreciate your taking the time to make a presentation before us here today.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 815

The Chair: Our next group up is the Canadian Union of Public Employees, Local 815. We have 15 minutes to be used as you see fit.

Ms Gayle Long: I'm Gayle Long and I'm representing Local 815, along with my local, Local 3252. We're all hospital workers in CUPE. I'm here to make a plea of careful thought and consideration of the changes about to be made in the Employment Standards Act, to be called the Employment Standards Improvement Act. I cannot help but see this act as a step backwards, even prior to those accomplished in the early 1990s. At a time of restructuring in the public service sector, I cannot help but feel the government has misused its power against the right to protect the minimum standards of working conditions for employees by eroding the Employment Standards Act.

If this definitely was going to be an improvement act, there should be an increase in the base wage as the cost of living has increased and now rent controls have been taken off; also, there is the fact that Hydro may soon be sold off and then our power is out of our control completely. Our cost of food is also going up as our dollar is diminishing in other countries.

As for the part-time hours, I believe we should have a standard 24-hour part-time hour work and after that, anything over 24 hours should be called full-time, as many employers are using part-time workers in order to diminish the payment. I also believe it is time we opened our eyes and gave benefits to part-time employees. Many employees, especially those in non-unionized workplaces, have a need for vacation and protection also. There seems to be no definite protection there unless you do increase these basic ideas of employment standards.

Control of moneys by collection agencies is completely out of whack. These have a self-interest and self-motivating idea. There is no reason that the government could not collect moneys owed to workers by charging those employers who have gone against the rules and regulations of the Employment Standards Act. This should not be a burden on the government but a burden on the employer who has broken the law of the Employment Standards Act.

Employees will have a more difficult time getting moneys owed them and never receive full redress as the cost of going to these private agencies will take away some of their money. Also, anything over \$10,000, they will have to go a civil court, and many of these employees would not be able to afford this. Employees should be recouping their money by a commitment made by the government. There is no recall. Many — I've done this all at the last minute. Can you tell?

I'm going to go back to the fact that employees now have only six months to file against an employer. This is unreasonable. The government will then have two years to investigate the claim, and then they have two more years in order to secure the money, at that time asking them to go to a collection agency in order to receive the money. Also, it's a fact that moneys under a certain amount, maybe \$100, maybe \$200, will go to Small Claims Court. This will also cost the government money and it's not a fair way to do it.

1630

You, the government, with the passing of this act, will give the employer the instrument so that private companies paying the minimum wage and having substandard working conditions can accelerate the practice of contracting out unionized work, not giving concessions, those unions who will not give concessions to the new minimum standard. The unions in the past years have given away increases in salary instead for the protection of better working conditions and job protection. Now you're wanting to take these things away.

Already workers are under the stress of the threat of losing their jobs, as well as the burden of being overworked, since employees are not being replaced if they're off sick, as part of cost restraints. As well, only a percent of employees on vacation are being replaced. Now you are allowing the employer to have employees work more hours without paying them overtime.

Employees are under the pressure of being reminded by employers that there are thousands of people out there willing to do their job, and with the abundance of unemployed plus the threat of workfare, this is causing a great deal more stress. Non-unionized workers are finding their work is being contracted out over the past years or they are being laid off and they are being rehired in the same workplace by a private company at a reduced rate of wages. This is not fair.

I've had several people come to me to ask for help and information. They are not hospital workers. They are a young man who worked for a lawn care company. His employer gave him three paycheques, each one being an NSF cheque. He now has to wait 14 days for this cheque to go through his bank in order to see if it is NSF or not. A driveway paver for the summer had his pay held three weeks. It was one week holdback and two weeks in advance before he gets paid. He was then laid off and received no money. The same thing happened to a young man who works snow removal. There is also a young woman who came to me who worked in a doughnut shop. She worked three weeks and was told she was on training. Afterwards, she was told she was not to be paid during this training time and they didn't need her.

At a work clearance warehouse, a young woman came to me telling me of how everyone was a boss and she would be in trouble continually because this boss would tell her one thing, another boss would tell her another thing. At the end of it all, just simple clearance house gossip got her fired. She had nowhere to turn. She figured if she made too much fuss, she would be eliminated from ever working in a decent job again. She's been unemployed for two years and has three children.

All of these people have been too afraid to go forward, except for one young man who worked in a fast food franchise and worked in unsafe conditions when they used insecticides to get rid of bugs. He informed employment standards about this practice. Two weeks later he was given sick pay and was eliminated from his job.

The employees who will affect by these changes in the act are the most vulnerable. They are also the voters and taxpayers of this province. The changes seem to benefit the employer only and erode the protection to the employees. This is the open door to private companies having lower wages and taking advantage during this time in an oppressed job market. Please think twice about making these changes. This will not help the job market or the employees. It will only widen the gap between the rich and poor.

Thank you for your time.

The Chair: Thank you very much. That leaves us exactly six minutes, so we'll go two minutes per and we'll start with the government.

Mr O'Toole: Thank you very much for your presentation. It seems that you gave it a fair amount of personal thought, and I commend you for that.

You mentioned stress, and you're right. The world of work, as I see it, is changing. It's changing for a number of reasons: workers' habits, individuals, the market, a number of factors really.

I just want to bring a couple of points to bear, that today the collection system under the Employment

Standards Act is not working. Less than 25% of the judgements are actually collected, for a variety of reasons, so the system is really broken. Those who have been waiting — and the litigation process itself is bogged down, so the system itself is broken.

Another point that's important to think about is that 96% of the cases, when you're looking at the limitations which you were talking about, are under \$10,000, and I think it's important to quickly get the parties together to get a solution as quickly as possible, which leads to the six-month period. If more people came forward as opposed to delaying it, the director can then bring subsequent claims, or the officer can bring claims, from other persons who may be in violation. So the quicker you bring these things to bear — I think there are a lot of very progressive changes that are long overdue.

I would ask you one question. Do you think the Employment Standards Act should go through a full hearing and full discussions, part 2 that was referred to by the minister?

Ms Long: I believe a full investigation, full discussion, should be made, including those people who best know the workforce. If we're talking to — I don't even know. Speaking to you, I don't know if I'm talking to closed ears, if we have an open ear and an honest opinion of people wanting to hear what employees and employers have to say. The only way it will work is if we all work hand in hand. As long as somebody is making the decision and forcing it on employees, it will not work. Employees can be cornered so far, and then they will stand up and fight back.

Mr Hoy: Thank you for your presentation. Would you agree that having minimum standards as it applies to wages, minimum wages, has probably enhanced the quality of life in Ontario and has attracted people to the province?

Ms Long: I believe the minimum standards would be okay except for the fact that, depending on where you live in Ontario, the cost of living has gotten out of hand, and I don't find your standards are going to be all that much better. I know people are working longer, harder. Being in the health care sector, I see the cost of what is happening in the public: family breakdown, the emotional stress on families. It is becoming a growing concern. As we're cutting back on mental health, we're finding the stress out there is enormous.

Mr Hoy: My point would be, though, that if the minimum wage was lowered, that stress and those things that you're talking about would be more severe.

Ms Long: Would definitely grow. We are already seeing the breakdowns in families.

1640

Mr Christopherson: Thank you for your presentation. Government members are talking sometimes, some of them, about the possibility of a broader review of the Employment Standards Act, and they've asked a number of people if they think that's important or worth doing or if there would be interest.

I'd like to ask you whether, since they're already going to do that in their own way — it's probably not a way that we're going to be real comfortable with, but they have the majority government. Do you think that not just

the part about flexible standards but that all of the proposals in Bill 49 save and except the two or three items that really and truly are clarifications and are improvements — and that's it; there are two or three that really are minor housekeeping, that are improvements, and nobody's questioning that. Every union rep and community worker who's come in here so far has acknowledged that. But would you feel that the rest of Bill 49 should be put over to such a review rather than rushing this through?

Ms Long: Definitely. If you rush it through, it'll cost you more in the long run for the fighting back that will happen afterwards. I think also that you will see unions take maybe an unfriendly opinion to the government.

I have relatives on the wall out here who are former MPPs for the Progressive Conservative Party and I think they would cry at what's being done. They were strong believers in labour's rights and on human rights, and I think we're seeing it being eroded this time very drastically.

Mr Christopherson: Is it fair to say too that if there were such a review, that contrary to the government calling this — I mean, it truly is insulting that the name of this act is An Act to improve the Employment Standards Act. It's insulting to suggest that that's the name of this. But if you were to agree to a broader review in terms of improvements, would they be the sort of things that the government's contained here in Bill 49, or might they be some other things?

Ms Long: They would be some of the things I had listed below when I made my statement. I don't know if you picked up on them or not, but definitely to me this is a private industry takeover act as far as I can see.

The Chair: Thank you very much. We appreciate your presentation before us today.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

The Chair: The next group up will be the Ontario Secondary School Teachers' Federation, Ms Wright and Mr French. Good afternoon to you both. We have 15 minutes for you to divide as you see fit between presentation and question and answer.

Ms Pat Wright: My name is Pat Wright. I'm an executive officer for the Ontario Secondary School Teachers' Federation. I am accompanied by Mr Larry French, who is a member of our staff. I thank you very much for the opportunity to make this presentation on behalf of the almost 50,000 members we have in education as teachers and in other areas of the classroom and providing the educational services for the students of Ontario.

When we looked at this bill, Bill 49, we saw there were some areas which seemed to be clarifications, I guess one may want to call them. I'm referring to the areas of vacation entitlement and the areas which remove some of the ambiguities around pregnancy and parental leaves. However, when we reviewed the rest of the bill, we found there are some significant areas where I would say that this bill does not represent minor housekeeping changes. In fact, they do represent some significant changes, changes which we would find problematic.

It's more than housekeeping. We do not believe it results in a better balance in the workplace. In point of fact, we would suggest that some of these significant changes would be moving the workers of Ontario backwards and have a potential for adverse impact not only upon workers, but on employers and the environment in the workplace, because I think it will have a very, very major impact on how collective bargaining and contract negotiations occur.

I came into the OSSTF as a negotiator and I know that any time we place constraints upon the system, constraints which adversely affect negotiations, it also adversely affects the environment in which we find ourselves. I speak specifically, for instance, to the area where we talk about flexible standards.

Recently we had the Olympics. During the Olympics I watched some very flexible people do some gymnastics, and in doing that they seemed to be bending and twirling and turning every which way. They were flexible. One often thinks of the word "flexibility" as a word that implies some kind of ability to change and accommodate. But what I see in this bill is not a flexible standard; it's a mechanism for adversely affecting the collective bargaining environment.

You talk about greater good — I'm speaking specifically to section 3. How do you determine what is the greater good? If I just read the section here, you're going to put "prevail over an employment standard if the provision confers a greater right upon an employee than is conferred by the employment standard." How do you determine the greater right? Greater right than what?

When you fool around, as it were, and alter the baseline, a baseline which sets the framework that everybody knows what the rules are and how those rules apply, you will have the potential for establishing one workplace operating under one set of standards and another workplace operating on a completely different set of standards. The minimum right guaranteed to all workers is a right which keeps both the employers and the unions operating in a manner to protect some basic rights for all workers.

As an educator, when I go into my classroom and I say to my students, "We believe in equity and we believe in fairness," do I tell them, "You have fairness number one in one workplace and fairness number two in another workplace?" I think not. I think that is not the Ontario that we have come to love, that we have come to cherish and that we have come to regard.

The kinds of things that can happen under this so-called flexibility in the workplace is that you have a tradeoff between a monetary value and time and something which is non-monetary in determining the greater right. Do you say, "Vacation pay is of more or less importance than time one has with one's children"?

For instance, it could turn out under this so-called greater right that a union could, for whatever reason, negotiate away working days. How long do you work? Do you work five days a week? Well, maybe now under this you'll work seven days a week. What happens to your time with your family? This is going to be especially problematic in those areas where we have single-parent families that feel they have very few resources available to them to fight this and to protest about this.

There's another section of the act, and I refer specifically to subsection 20(2), where we talk about enforcement where you have a collective agreement, enforcement where the employee is bound. "An employee to whom a collective agreement applies (including an employee who is not a member of a trade union)" is bound by the decision of the trade union. What happens to the right of that individual when the act itself takes away their basic right in terms of their employment? How do they respond? Because it says further that a complaint is not permitted.

We have some great difficulties with some of these sections of the act. Maybe the intent was for improvement, and I will not question the intent of the government because I'm sure the government wants to make Ontario a better working place for working people. However, I would question the actual application and the doors that this allows to be opened so that the working people can be adversely impacted upon by their employers, by unscrupulous employers. I know that although we try not to have those, we do have some of those.

I also have concerns about placing the onus upon the worker to take everything through the courts, because we very well know that we have a number of workers here who do not have the resources to find their way through extensive and lengthy court proceedings. We believe that the employees of the Ministry of Labour, people who work with employment standards — employment standards officers are trained, are capable and are therefore able to enforce the act, enforce the law and to ensure that if collections need to be done, then the collections are made rather than hiving off to private companies.

I believe that when you put in place a maximum claim that limits things to \$10,000, what again you are doing is removing from workers their rights to fair wages. If I am owed \$15,000, then pay me \$15,000. Don't limit my claim to \$10,000. I wasn't owed \$10,000, I was owed \$15,000 by an employer. I think the same thing would apply to limitation. The application of limitation periods, I think, takes away from workers their abilities and their rights.

1650
In conclusion — and I'm looking at the time, so I'll leave some time for questions — I would suggest that this piece of legislation, Bill 49, does not represent minor housekeeping changes. If the minister is going to do a complete review of the Employment Standards Act, if there's going to be a review that is scheduled to take place, then why not leave this until such time as that review occurs? Why not work with the trade unions, the workers of this province — such as ourselves, for instance — who would be happy to sit down and discuss with you ways in which we can indeed make certain improvements and ensure that we have a piece of legislation that guarantees the minimum rights for the workers of this province.

The Chair: Thank you very much. That leaves us, bang on, six minutes for questioning. Seeing only two parties present, I will say we have three minutes per caucus.

Mr Baird: With respect to your comments about why not leave this to an overall review, the minister

announced this morning that she would leave the bigger part of the bill with respect to the employment standards package, negotiating a package that was greater than the minimum standard, she did say that she would put that over to the review, which has already begun, is under way; so a big chunk of your suggestion. The minister certainly has listened to all stakeholders from both labour and many in the business community. To do so, she's done just exactly that.

I had one question I wanted to ask you. One of the provisions in the bill — and you didn't make mention of it in your presentation — is with respect to collections. Right now, once an individual makes a complaint, it's investigated and ordered by the employment standards officer, only 25 cents of every dollar that's been ordered to pay is actually paid. What do you think would be an acceptable amount for the ministry to collect? They previously, up until 1993, had a collections branch within the employment standards division that was phased out and the 10 employees there were made surplus. What would you think would be a good percentage that the government should aim for in terms of the recovery of money for workers?

Ms Wright: I would hate to suggest to the government that you pay 25 or 30 or 45. From my perspective, if a worker is owed 100%, then the worker gets paid 100%. I understand the logistics of that and how that may not be entirely possible. However, I suggest that if all of the employers contributed to a special fund from which employees who were in need of some kind of supplement could be paid as a kind of an insurance, or maybe even a wage protection, that kind of plan, then it is entirely possible that between what can be collected and what the fund could supply, they could be topped up to about 100%.

Mr Baird: I certainly agree with you on the 100%. I think it's got to be our mission as a government to ensure that 100% of the orders are filled by a given employer. With respect to your comments, though, on a special fund, would your union be advocating a new payroll tax of some form to cover that?

Ms Wright: I'm not referring to it as a payroll tax. I think we could sit down and work out the things that are necessary around the development of that kind of fund. I think it's a fund that employers should contribute to, to make a — call it a stabilization fund, if you want to call it something.

Mr Baird: That would involve, though, good employers. Mr Duncan said this morning that the vast majority of employers accept the responsibilities under their act. Certainly a majority do. The law-abiding businesses that are accepting their responsibilities and are treating their employees fairly shouldn't be punished for those firms that don't accept their responsibilities under the act.

Your point, though, about looking for 100 cents on the dollar is very apt. That's why the government wants to pursue private collection agencies, to say an order is issued, you have 45 days to appeal or pay but on the morning of the 46th, that will go into a private collection agency that will have, as Leah Casselman spoke of this morning, a personal interest in wanting to ensure that

money is collected, because they don't get paid unless they collect money for a worker who is owed a claim. Would you have a problem with the private collection agency?

Ms Wright: Yes, we would have a problem with a private collection agency, because we are fundamentally opposed to the use of privatization strategies, as it were, to do the jobs that we think correctly belong to the government and the people of Ontario.

Mr Baird: We're getting 25 cents on the dollar. A year from now, if this is implemented and it's getting 50 cents, you'd still be against it?

Ms Wright: I did suggest to you a strategy that would allow you to not necessarily use the private collection agencies by looking at other strategies.

Mr Christopherson: Just to pick up on the last point of the parliamentary assistant, it's interesting that Hansard will show that the government's priority and objective is to achieve 100% of the funds. Yet if you look at the legislation the way it's drafted, if they collected 100% of what the law would allow, that could be only 75%, because that's what the new draft law would be, that there's a need on the part of private collection agencies to only collect 75%. That's the minimum amount. I find that quite interesting, and we'll pursue that further as the hearings unfold.

The government also leaves the impression, the parliamentary assistant certainly very specifically left the impression, that because the issue of flexible standards has now been referred to this broader discussion — it doesn't mean it's dead; it just means it's been referred to another day — that somehow everything ought to be hearts and flowers and the rest of this bill is quite acceptable to everybody. That's what I felt the impression was he was trying to leave. What are your thoughts about that? Do you think the rest of the bill is just fine with that one piece out, or do you think there are enough problems here that the rest of it ought to be referred to the broader review also?

Ms Wright: I think there are enough problems with the bill that it should be entirely referred to the broader review. In terms of flexibility of standards, the word "flexibility" tends to make me very nervous because we wonder, is the flexibility in terms of the application of the rules or is the flexibility in terms of the determination of what the rule actually is? I'd hate to see an Ontario where we have a checkerboard of standards across the province.

I think we have to move for a minimum set of standards, standards that every student in the province can get into the workplace and know where they are, where every parent knows, if their child is working part-time or full-time, where their child's rights are and where every employee in the province, whether they're a student employee or an adult employee, has a full knowledge of what to expect from their employer in the workplace, so that we have a basic minimum set of rights and standards maintained right across this province.

Mr Christopherson: If the government removed every aspect of this bill that had an impact on workers who have a collective agreement — so every reference to unions comes out and all that's left are references to non-union — would you still care?

Ms Wright: Would I care? Yes, I would care.

Mr Christopherson: Why?

Ms Wright: Because it's about the rights of individuals, whether or not they belong to a union. We have this section in here that I referred to, for instance, section 20 that talks about the employees a collective agreement applies to, whether or not that collective agreement is determined by a union. So we have to look at the fundamental rights of individuals and what happens to fundamental rights of individuals under this piece of legislation. I think that is what puts the workers of this province, whether or not they belong to a union, back in time. That's why we are opposed to this piece of legislation.

Mr Christopherson: Excellent. Thank you.

The Chair: Thank you both for taking the time to make a presentation before us here today.

Ms Wright: Thank you for listening.

1700

MARKHAM BOARD OF TRADE

The Chair: Our next group up is the Markham Board of Trade. Good afternoon, gentlemen. Again, we have 15 minutes for you to use as you see fit, divided between the presentation and questions and answers. I wonder if you might introduce yourselves for Hansard.

Mr Ted Shepherd: My name is Ted Shepherd. I'm the president of the Markham Board of Trade. I have with me Mr Cliff Hawkins, who is a director of the board and the chairman of the government and economic policy committee, whose committee put together our submission. Any questions, I think, should better be directed to Mr Hawkins than myself.

The Markham Board of Trade is a not-for-profit organization established in 1981 to assist member businesses in the Markham community and represent their concerns to government of all levels. We are associated with the Ontario and Canadian chambers of commerce.

We have 730 member companies which represent a wide variety of businesses, including computer and high-technology companies, business and financial services firms, wholesale and distribution companies and the hospitality industry. Our member companies range in size from large international corporations to small business enterprises. Some 92% of our member companies are small businesses. I might add that the majority of those small businesses have less than 10 employees. So 92% of our companies are small businesses, as I said, with 50 or fewer employees, and the remaining 8% are composed of large corporations such as Apple Canada, Allstate Insurance of Canada and IBM, to mention a few. Our member companies employ more than 32,000 people and our presentation to you represents the employers and employees of these firms.

Guiding principles: The Markham Board of Trade applauds the government's decision to significantly reduce its role in the administration and enforcement of the Employment Standards Act. Our belief is that the provisions of Bill 49 should reduce the cost of government, enhance the ability to do business in Ontario and continue to maintain the protection of workers' rights. We see this initiative with the Employment Standards Act

as a clear step in the right direction. Therefore we support Bill 49, with very few exceptions.

The following are some key issues.

Reducing the cost of government: As a parenthetical comment, I might add that the board of trade has been actively pursuing the reduction of the role of government in business for many years. We are very glad to see that Bill 49 has come forward as a move to use existing structures and mechanisms rather than creating parallel ones that add cost. Making obligations under the act enforceable through the grievance and arbitration procedure of collective agreements for unionized employees provides business with the ability to deal immediately with issues without having to go to government for resolution. This is a natural extension of the grievance and arbitration procedure which further streamlines government and should reduce the cost to business.

A provision in Bill 49 that recognizes that the government should not be in the collection business has merit. By allowing the contracting out to collection agencies for amounts owing under the act, the government follows a principle that the private sector has successfully used of focusing their energy, time and resources on their core business rather than on activities which others can do more effectively. We expect this contracting out of collections will provide the opportunity to reduce the government payroll and achieve the collections with greater efficiency and effectiveness.

We are also pleased to see that the ability to file electronically is allowed under Bill 49. This will save time and money and will be consistent with the way many businesses operate today.

Enhancing the ability to do business: One of the major problems that business people have had with the Employment Standards Act was that of double jeopardy. Requiring individuals to decide whether they want to pursue litigation through civil action or file a complaint under the act will remove a great burden from business and yet still provide the individual the opportunity to determine which course of redress they wish to follow. This improvement to the act, coupled with a \$10,000 limit on orders, will greatly reduce the cost of doing business in Ontario and assist business in being more competitive.

In addition, the board supports the amendment that requires that compromises or settlements relating to money owed under the act will be binding once the money is paid. We further support the reduction from two years to six months of the period that a complaint can be made of moneys owed to an employee as well as the extension from 15 days to 45 days for filing an application for review of an order to pay. This administrative simplification and shortening of time frames for claims, but loosening of review application filing times, moves further towards relieving the legislative burden on business while protecting the ability to appeal.

The Markham Board of Trade agrees that there needs to be greater flexibility in designing benefits provisions for employees. Under Bill 49, a business would be able to view as a totality a collective agreement's provisions for public holidays, overtime pay, vacations with pay, hours of work and severance pay, and weigh them against the provisions of the Employment Standards Act to see

which confers a greater total benefit. This will assist employers and employees in designing benefit packages that most appropriately fit their individual circumstances.

Protecting workers' rights: Contrary to allegations by opponents of Bill 49, the Markham Board of Trade fully agrees with the government that Bill 49 does not weaken the protection of workers' rights under the act. Indeed, it guards against any reduction of employment standards in Ontario contained in the current legislation. If Bill 49 did not ensure this, the board of trade would not support it.

The board agrees with the provisions of the bill that pregnancy and parental leave should be recognized when calculating an employee's length of service and length of employment. This allows, as it should, these periods of employment to be included when dealing with any service-related employee rights in an employment contract, the one exclusion indicated in Bill 49 being the employee's probationary period.

However, the board requests that the government reassess the broader provision in Bill 49 which requires that entitlement to vacation time off and pay be based upon 12 months of employment whether the employment is active or not. This could result in an employee demanding to have vacation time off and pay after having returned from a paid sabbatical, for instance. Vacation becomes under this provision of Bill 49 time off from being on the payroll of an employer rather than time off from work. We argue that this provision is contrary to the whole rationale for ensuring a minimum standard of vacation time and pay in the legislation. We ask that this amendment to the act not be passed.

There is clearly a need to reduce government costs and its involvement in running private enterprise. Bill 49 helps reduce the red tape that makes it difficult to do business in Ontario and be competitive with companies in other jurisdictions. Bill 49 provides greater flexibility to a business to make arrangements with its employees that better serve both the employer and the employee in a particular business environment.

We endorse these improvements to the Employment Standards Act, with the one exception noted above, and look forward to the more comprehensive review of the act in the upcoming months to accomplish more of the same. Thank you very much.

The Chair: Thank you, gentlemen. That leaves us again with just seconds over six minutes, so two minutes per caucus.

Mr Ted Chudleigh (Halton North): Thank you very much for your presentation. We heard earlier today about some very unfortunate employees who had been badly abused by an employer. Whether or not that employer is still in business in Ontario, I'm not quite clear. I think this bill is designed to alleviate some of the hardships on individual businesses, but if government were to come down very hard on those businesses that do break the law or do run up alongside the regulations, would your organization have difficulties with those kinds of activities?

Mr Shepherd: Not in the least.

Mr Chudleigh: Do you see that as government's role?

Mr Shepherd: We feel the role of government is to maintain a civilized standard of behaviour by business

and employees, and the role of the legislation is to define those civilized standards of behaviour. If those have been defined by the Legislature, the Legislature and its arms of enforcement should be called upon to enforce those standards.

The Chair: Any other government members? We have one minute.

Mr Tascona: I'm just curious with respect to what your comment would be. We've heard a submission recently that we have difficulties in the collection of orders to pay. Presently the statistics are that two thirds of orders to pay are not collected. One measure that we have as recourse for companies that are bankrupt or insolvent is to go after the directors, but that's a fairly difficult and slow process. So the suggestion we've heard is that maybe a payroll tax or an employer-funded, experience-rated, which would be a tax, should be imposed on employers in general because we have a few bad apples. What do you think about that?

1710

Mr Shepherd: We're opposed to taxes of all sorts. Businesses in Ontario are slowly but surely struggling out of a long recession. We are competing with jurisdictions with less government and less taxes. We feel the government in Ontario should be giving us a chance to make our way in the world and compete on an international scale. Adding taxes and disincentives to business doesn't help us at all, and it doesn't help the employees and the population of the province in the long run.

Mr Tascona: Do you think it would be of assistance if employers could file their appeal of an order to pay electronically and also pay the order to pay electronically?

Mr Shepherd: Our feeling is that that would be of benefit, yes.

Mr Hoy: Thank you for being here. I apologize for being out when you began your presentation. Earlier today we had a similar presentation that spoke in regard to the two-year and six-month period for complaints. They rather liked that idea, as do you, and they went on to say that they wanted an extension for the employee of 15 days to 45 days for filing application for review. It's interesting to me. I didn't have a chance to ask them, but one instance where reducing the time period by almost 75% — and you favour that. In the case of appeals it's an increase of almost 66% in the time. But anyway, would you give me your rationale for the extension on appeal time?

Mr Cliff Hawkins: Our view on that is that the greater time that you can give both the employee and the employer in responding to a situation is to everyone's advantage. We didn't really look at the percentage because the percentages really don't apply given that we're talking very different absolute values. Our concern is that there is fairness in the Employment Standards Act both for the employee and for the employer in that particular kind of circumstance, so we support that kind of change in the act.

Mr Christopherson: Interesting presentation. Your statement on the first page that "The Markham Board of Trade applauds the government's decision to significantly reduce its role in the administration and enforcement of the Employment Standards Act" is quite fascinating, and

I'll do what I can to help get your message out to people about that.

I'm also interested in the statement that your member companies employ more than 32,000 people, which is significant, "and our presentation to you represents the employers and employees of these firms."

Mr Shepherd: I thought you might pick up on that.

Mr Christopherson: Yes. I'm a little curious as to how that is.

Mr Shepherd: We feel that the firms we represent are looking after the interests of their employees. They are giving them work, they are looking indirectly after their families and their welfare. We feel that the board of trade, in supporting these firms and supporting their interests, supports indirectly the interests of their employees.

Mr Christopherson: Fair enough, but don't you feel it's a little presumptuous, given the controversial aspect of this legislation, to present yourself as being the one entity that represents both sides of the equation?

Mr Shepherd: I must say that on the surface of it, the statement that we represent the employees in any direct way is a little presumptuous. I agree.

Mr Christopherson: On page 3, I was interested to note that you state that you "further support the reduction from two years to six months of the period that a complaint can be made of moneys owed to an employee as well as the extension from 15 days to 45 days for filing an application for review of an order," and you note "This administrative simplification and shortening of time frames for claims, but loosening of review application filing, moves further towards relieving the legislative burden on business while protecting the ability to appeal."

My question would be, that's fine for business, but what about the workers? Where do they get something out of that?

Mr Shepherd: We feel that the workers are adequately protected, and in fact we feel that the support of business and business enterprises in Ontario and their ability to do business and compete on an international and a national scale is a direct benefit to the employees and the population of the province.

Mr Christopherson: So whatever is good for General Motors is —

Mr Shepherd: If there's no business in Ontario there's no business for the workers in Ontario either.

Mr Christopherson: I have to say to you, in closing my comments, that that really is a scary thought because we're well past, I would suggest with great respect, the idea that we have benevolent dictators who can decide by virtue of what crumbs fall off the plate when workers are doing well and when they aren't. That's the last century. We're at the point where individual rights of workers and the collective rights of workers have their own place in our society. I'm quite surprised that a sophisticated organization like yours and a person like yourself would suggest that that ought to be the order of our society.

The Chair: That sounded more like a statement than a question. Thank you, gentlemen, for taking the time to make a presentation before us here today.

Mr Shepherd: Thank you for listening to us.

INJURED WORKERS CONSULTANTS

The Chair: Our next group up on our list is the Injured Workers Consultants, Marion Endicott. Good afternoon. Again, we have 15 minutes for you to use as you see fit, divided between presentation and question-and-answer period.

Ms Marion Endicott: Thank you very much. Good afternoon. I have with me here Rebecca Lok, who also works at Injured Workers Consultants. We've been before you on other occasions, usually having to do with workers' compensation, but to the degree that you don't know of us, we're a community legal clinic providing services to people who have had the misfortune to be injured at work and who are having troubles with their claims at the Workers' Compensation Board.

We are of course speaking to you today on the proposed amendments in Bill 49 to amend the Employment Standards Act, primarily from the perspective of what that means in regard to health and safety. Will this generate increased protection for workers or will this possibly generate more injuries at work? As well, we want to look at the question of how it will actually affect injured workers, if at all.

The main part of the bill that concerns us is the part that allows for the minimum standards of the act to be overridden by negotiation between the employer and the union. This is of concern because there is a reason for minimum standards. They have been put there through years of experience and debate which indicate that they are necessary. It is our prediction that in the negotiation that occurs around minimum standards, the net effect of that will be to dramatically increase the hours of work that workers engage in both on a daily basis and on a weekly basis, and that is our main concern about the effect of this bill.

I think we're all very aware of what a central issue hours of work has been in our industrial society. Over the last century it's been a key area of concern and we have learned collectively together that it's very important to have not too many hours of work, that when you overburden people with work they are fatigued and they don't have time with their families, they don't have time for leisure. They are unhealthy, unhappy people, and unhealthy, tired, fatigued and unhappy people are not productive and they are not safe. It's our sense that the effect of these proposed amendments will be to produce a greater number of injuries at work.

1720

The other aspect of the bill that disturbs us is that it represents a part of a general trend to lower workplace standards. The lack of enforcement provisions in the bill indicates that employers will increasingly feel that, well, the legislation is there but they don't really have to pay attention to it. When you don't have enforcement by the government, when you have within the amendments the suggestion that workers have only a limited amount of time to put in a complaint, that they can't even necessarily get back all the money they are due, or if they want to go for all that they've got to go to the recourse of the courts, which, of course, is a very expensive endeavour for anyone and would very much tax the resources of a working person, particularly a working person who is, as

in the case here, without money because they have been laid off without severance pay or have somehow had a problem with their hours of work. In this kind of situation we can see that many, many workers will not pursue their claims and, as a result, employers will increasingly feel that they simply don't have to pay attention to the legislation.

This is part and parcel of what is happening in other pieces of legislation that all fits into a general picture of lowering of standards for the working people of Ontario. The other area where I am most familiar with it is in the area of health and safety. You're probably aware that the enforcement of health and safety standards has dramatically been dropping over the last few years and increasing numbers of inspectors have been laid off, and without enforcement behind legislation there is absolutely no expectation that the employer should have to live up to those minimum standards.

Another aspect of these proposed amendments is really an unjustified denial of rights, and that comes into effect in the sense that many of the workers will not pursue their rights because they can't afford it, because they missed the time limit. Why might they miss the time limit? One reason is because they may not know what their rights are. Unless the government is going to put a tremendous amount of time, energy and resources into educating workers as to what their rights are, to put a time limit on their pursuit of those rights simply is unjust. It's saving money by fiat. It's not actually doing any justice at all.

In particular for injured workers there's a problem with the time limit. You may know that after injured workers have been hurt, there's a legislative obligation by employers to take them back to the place of employment, and that is in effect for a certain period of time, effectively about six months. Whether or not there is a legislative requirement on the particular employer, there's a general human rights requirement that injured workers not lose their jobs because of their injuries.

Say we have an injured worker who has gone back to their place of employment and, for whatever reason, the employer is doing this in order to meet their legislative obligation but they really don't want that worker back. So they find some reason to lay that worker off. The worker, however, suspects it's actually because of their injury and wishes to pursue this with the WCB. That is their right to do that. You may or may not know that the WCB is notoriously slow. To have a claim processed at the WCB can take months and months, if not years and years.

In this situation, say we had a laid-off worker who didn't get severance pay and wanted to pursue under this act their severance pay. If they went to pursue the severance pay under this act, with that time limitation, they would in the board's eyes be accepting their laid-off situation and would not be able to pursue their claim that they should have that job, because taking severance pay is accepting the situation.

On the other hand, if they pursued the claim with the board but it failed, the board did not find in their favour, you can be sure six months will have passed, but by then it's too late for them to put in the claim for the severance pay. I'm sure there are many more other examples but, as

I was reading through this material, that is the most obvious one that sprung to my mind around the return-to-work provisions.

Finally, I just want to make a general comment, which is the exact opposite of the two gentlemen who were here before me, and that is, as a citizen of Ontario, just the general concern about the race for the bottom. The employers really like this kind of legislation, they say, because it allows them to compete. To compete with whom? To compete with the Third World. What we're saying is we want Canada to become like Macau, to become like Mexico, to become like any of those Third World countries we are competing with. Well, I ask you, and we ask you at Injured Workers Consultants, do we really want that kind of society?

One of the reasons that companies like to invest in Canada, if we want to talk about it in business terms, is because even though it may cost a bit more per hour to employ a worker, this is a much nicer place. This is a place where you can live, this is a place you can feel good about and this is a place where we have healthier, happier workers who are in fact more productive. That's what the studies show. Both as citizens of this province and as people concerned about investment and productivity, really anything that lowers standards is not in our interest. Thank you very much.

The Chair: Thank you very much. You've left us just under five minutes, so we'll take two questions. The first one will be the government side.

Mr Baird: Thank you very much for your presentation. We all appreciate it. You spoke, I guess, comparing some of this legislation with health and safety and you specifically went into great detail on declining enforcement. You said that an increasing number of inspectors have been laid off. Is that correct?

Ms Endicott: Yes.

Mr Baird: What's your source on that, could I ask?

Ms Endicott: Just the news. In the last six months the number of inspectors who were anticipated to be laid off were not. That was due to heavy negotiations between the government and the union that represented those inspectors. So not as many inspectors were lost as was feared, which is great, but we're still losing inspectors.

Mr Baird: But you're a professional. You'd get better quotes. I guess it's a concern we have. There have been no health and safety inspectors laid off in the previous year, none. It never happened, there never have been plans to.

Ms Endicott: Oh, there were plans to. I can vouch for that. It may —

Mr Baird: I asked you for your source and you just said, "the news." I think it's very important to put on the record that this government hasn't, but that Bob Rae's government did, by 7%. They cut the number of health —

Ms Endicott: We were pleased with that. I have no quibble there.

Mr Baird: I would take, though, your energy with that and put it to my friends from the third party, because I can tell you, health and safety is a very top priority for the current Minister of Labour. She's made it the top priority within the department; there have been no cuts in health and safety inspectors. She's been crystal clear on

that. We've repeated it at every available opportunity, because it's a real priority.

I guess I have a concern. You explicitly said that they had been cut, and I think it's important that folks like yourself, who are professionals and well-respected, as you should be with the incredible amount of experience you've got, have your facts, because this government hasn't cut the number of health and safety inspectors like the previous government did because we think it's more important than they did not to cut. It's a real priority for us.

Ms Endicott: I'm sorry, I have to intervene. This government has done nothing to satisfy us within the health and safety realm. It is true that the number of inspectors that were anticipated to be laid off were not laid off due to heavy negotiations, but we have not seen anything that increases the enforcement and there was very poor enforcement before. I'm not going to stand here and say it was good; it wasn't.

The number of critical injuries has gone up 28% in the last five years. I didn't bring those figures with me, but the number of inspections have dropped dramatically over the last five years. It includes the NDP government; it includes this government. They have dropped and they're dropping. If this government is serious about health and safety, and I didn't come here to talk about the health and safety legislation, I came to talk about —

Mr Baird: You did though.

Ms Endicott: Well, I talked about it in —

Mr Baird: In great detail about it.

Ms Endicott: Anyway, the point is that if this government is serious about workers' health and safety, they would really put a lot of resources into enforcement and not devolve everything to the joint committees at the workplace and they would get rid of experience rating at the WCB, which is a major factor in diverting employers away from health and safety despite their statements to the contrary, and instead put their energies into fighting claims.

1730

Mr Hoy: Thank you for being here today. I was particularly interested in your conversation about severance and how it related to WCB and time lines and how one could jeopardize himself that way. I have to admit it's the first that I've been aware that could happen.

Further to that, I have had a number of constituents who don't understand their severance rights. You're quite right. People tend to know what the minimum wage is within a dime or a nickel or so and they know what the hours per week might be, but on some of these other issues I've had many requests, "What are my rights as regard severance?" So I appreciate your pointing that out to us.

Ms Endicott: Thank you.

The Chair: We're well over our time. Thank you very much for taking the time to come and make a presentation before us here today.

CANADIAN UNION OF POSTAL WORKERS

The Chair: Our next group is the Canadian Union of Postal Workers, Metro Toronto region. Mr Borch, good afternoon. We have 15 minutes for you to use as you see

it for questions or presentation. With that, the floor is yours.

Mr Robert Borch: The Canadian Union of Postal Workers is a national union. It more often than not falls under federal guidelines and jurisdictions. However, we also represent postal cleaners and various other groups in delivery-related functions that are respondent to provincial laws and regulations that guide the day-to-day worklife.

On May 13, when the Honourable Elizabeth Witmer introduced changes to the Employment Standards Act, she described them as housekeeping changes and implied that the alterations were to be minor and technical, the clarification of the existing regulations rather than the revamping of legislative procedures and language that would have a definite effect on workers in Ontario. Upon review, we found these alleged housekeeping changes to be quite major, with a detrimental impact on the cleaning industry at Canada Post and groups newly organized to ensure all workers with some very basic rights in Ontario.

The housekeeping amendment resulted in the polishing of employers' rights in Ontario so that they'd shine brightly, while at the same time workers' rights are either disposed of with the trash or swept under the carpet. Actually, this assault on unorganized workers, those truly dependent on assistance from governmental labour ministries, is even more serious as it will result in another roadblock to their basic rights as both organized and unorganized workers and has them remain at the abusive control their employers. At the same time, the organized workforce is deprived of some very basic rights which it had become accustomed to in Ontario for many years, decades in fact.

This brief is made on behalf of the Canadian Union of Postal Workers, which represents 65,000 workers across Canada, 20,000 of whom reside in Ontario.

(1) Flexible standards, section 3 of the bill: Prior to Bill 49 there were some very basic rights guaranteed in Ontario in which collective language could not be eroded by virtue of contractual negotiations where employers have an unfair advantage by way of such weapons as the legislative invitation to the use of scab replacement workers during industrial disputes.

Bill 49 allows collective language to supersede the basic standards in the arena of public holidays, hours of work, severance pay, overtime and vacation pay if the contract "confers greater rights...when those matters are assessed together." Talk about a way for lawyers to send their kids through university. This kind of language is what does it. This now allows for tradeoffs and a legalistic chess game that will see all those rights eventually eroded below the previous floor that was guaranteed legislative protection.

Under Bill 49 an employer could force an agreement but eliminate severance benefits or expand the hours of work, a safety issue, by enhancing overtime or vacation pay, making it easier for job layoffs and plant closures in Ontario, something we certainly don't need.

The basic rights previously respected are now carved away. Knowing well about the inequity in negotiating power that this government has encouraged in previous housekeeping arrangements, one need not be a rocket scientist to realize the effect that lay around the corner.

Employers can now put items on the negotiations table that were previously guaranteed and protected by law in Ontario. This will lengthen the negotiating process, stifle settlements for the weakest of those and at the same time encourage more disputes rather than enhance agreements between the parties.

At the same time it will starve small unions into submission, as legal costs will soar in order to establish the "confers greater rights...when...assessed together," which is the quite convoluted language of Bill 49. This housekeeping change in itself would be enough for us to stand up as postal workers to oppose the changes.

(2) Enforcement for the organized: Under existing language, a low-cost and efficient route is available for the parties to allow access to investigative procedures and to allow direct enforcement at the same time when it comes to such matters as workplace closures and the resulting effect on severance packages.

Bill 49 places a barrier in front of unionized workers, so this avenue previously enjoyed and often utilized is now blocked. Once again, this is a cost factor aimed at starving smaller unions into submission. Although the director can make an exception, it is at his or her whim, and unions will once again pay the price of this change. The resultant effect will be to encourage interunion turmoil by providing another avenue for individuals to challenge a trade union by deeming to have the Employment Standards Act included in collective agreements.

This amendment will mean that a union can be confronted with complaints with regard to the Employment Standards Act concerning the duty of fair representation. The responsibility with regard to the failure of enforcement will shift from employers to unions. With this change, the Ontario Labour Relations Board will be open to interpret such failure as a breach of the duty of fair representation, thus again opening the door to additional financial liability and even more congestion on the time of unions.

(3) Enforcement for the unorganized: This change would shift the responsibility for enforcement of minimum standards for non-unionized workers from the Minister of Labour to the courts, by way of the "other means" proviso. Also, the amount that is recoverable is capped at \$10,000, whereas presently there is no arbitrary limit. If an employee chooses one avenue, such as to claim for severance benefits to the Ministry of Labour, by virtue of the proposed amendments that employee is restricted from bringing a civil action for payment in lieu of wrongful dismissal for additional compensation.

Postal cleaners who file a complaint under the act have a very restricted window of two weeks to choose between a remedy in civil courts or to proceed under the regulations of the act. This could leave many out in the cold or unaware of this window, and there are much shorter time frames than presently outlined in their collective agreements.

Under section 64.4 there is restrictive language in which, once a civil action is started, employers are given the bonus of not paying wages owed, which is criminal in this society; or failure to comply with successor rights, which is a major roadblock to postal cleaners. Also, a worker who initiates a civil action for wrongful dismissal

is not allowed to claim severance or termination payments under the act.

(4) Ceiling on claims: The arbitrary maximum claim of \$10,000 seems to apply to such matters as back wages, vacation pay, severance pay, termination moneys etc. This is perforated only by a few exceptions. What this does is license, basically, the boss to steal from workers, as often these amounts will exceed \$10,000 where there was no cap before. If postal cleaners or truck parcel personnel are owed more than \$10,000 in back wages, severance pay or vacation pay, then why would this government allow them to be robbed of what they are justly owed?

Often an agreed-to collective agreement may grant severance pay for a 20-year employee which in itself would exceed the \$10,000 to discourage plant closures, massive layoffs and job losses, something I hope this government will be looking at. The minimum claim provisos of the proposal — no dollar figure has yet been set — will also be refused outright if they attempt to file a claim for wages owed to them by an unscrupulous employer. So both at the top end and at the bottom end the workers get the short end.

(5) Private collectors: The use of private collectors is a major error and is in lieu of simply having the employment practices branch do what they should have been doing all along: Collect assessed amounts owed and enforce standards. Penalties should be imposed against employers who feel they are above the law and refuse to pay. These penalties should be substantive and serious enough to be a deterrent. Rather than enforce the rules, the bill proposes to shift the burden to the private sector and attach a collection fee on top of it all.

Where the amount collected is less than owed to, say, postal cleaners, regulations would then be apportioned of the amount between the collector, the government and the employees. This puts a great burden on such low-paid workers. The danger is that those employees owed money who are at the low end of the wage scale may be required to pay fees to the new collectors as well, so they get less than is legally and rightfully owed to them and must pay a fee in order to get the deflated amount. Postal cleaners can't afford these systemic taxes on their money, nor can other workers at the low end of the pay scale. As they are starved into accepting less than is owed, they are at the same time taxed as being forced into agreeing to a lesser amount. Is it that the government of the day just does not want to hear from the working class in our society?

(6) Miscellaneous, but still important: Presently employees have two full years where they can be entitled to back pay from the date of the complaint being filed. This housekeeping change will reduce that period to only six months, thus again taking money from the workers' pockets. This time restriction is a major one which benefits the employers once again. Failure to meet the new six-month rule will mean, "Forget what you are owed or take the legal road," which is often out of the financial reach of postal cleaners or other low-paid workers in Ontario. Yet the ministry still is granted two years from the complaint date in which to investigate and two more years to enforce payments. Now tell me there is not a law for the haves and a law for the have-nots.

Conclusion: The Canadian Union of Postal Workers will not deal with the positive elements — and we do recognize them — of the proposed changes here but rather what we consider the problem areas.

1740

The question of successor rights in the postal cleaning industry is a sensitive one, where contracts are breached simply by virtue of a company changing its name. This leads to contract talks that are never-ending and periods of potential constant labour unrest. In circumstances where these issues are to be dealt with by a third party, we believe that a panel should be used rather than a solo decision-maker, but I digress.

We also feel a floor on a minimum standard must be maintained not only to stop the erosion of the rights of the most vulnerable in a workplace — which we call "the lame deer syndrome"; the wolves always stalk the lame deer — but also to set a standard of living in our society in Ontario. We feel these alleged housekeeping changes are in fact quite major. They allow loopholes for employers to easily chop away at what at the present time are basic rights which Ontario workers have enjoyed for years.

The CUPW asks you to reconsider moving the burden of the promised tax breaks from the backs of the wealthy to the pocketbooks of the impoverished in our society.

The Chair: Thank you very much. That leaves us with three and a half minutes, so we'll get two brief questions. I believe the last time we ended with Mr Hoy, so it would be Mr Christopherson.

Mr Christopherson: Thank you very much for an excellent presentation. I enjoyed it. I want to ask you to embellish on the point on the fifth page, second paragraph, where you talk about flexible standards. Although that's being put off, there's no doubt in my mind it's coming back in a big way, so we need to be talking about it as early as possible. You state: "Employers can now put items on the negotiating table that were previously guaranteed and protected by law in Ontario. This will lengthen the negotiating process, stifle settlements for the weakest of those...and encourage more disputes rather than enhance agreements between the parties." Can you just expand on that, because I think it's important we have that on the record, as to why you think that will be the result.

Mr Borch: When you have employers at the negotiating table they have the power to end strikes or start strikes. When you're giving more power to employers there is more chance for them to want to starve the unions into submission. By doing that they enter long periods of negotiations and long periods of industrial action. They also have at their whim now, of course, the scab legislation that was introduced in Ontario where once again they can keep a company out on strike much longer.

You'll notice during the anti-scab legislation in Ontario that there weren't the strikes people thought there would be. In fact, there were fewer strikes, because all of a sudden you had to bargain; you had to sit down face to face with the boss and you had to bargain. There was pressure on both sides. When that pressure is lopsided, when the scales of justice are turned to one side, then you

on't have that pressure on either of the parties to settle. In this case what you'll have is the employer sitting back, letting the strike happen and letting it go on as long as it wants and encouraging such a standard in our society, which I think is detrimental.

Mr O'Toole: On the same point, picking up on Mr Christopherson's, I would ask you to explain to me flexible standards. I've worked in a number of workplaces. Earlier on today we had a presentation from the Ontario Secondary School Teachers' Federation. They don't work a traditional 40-hour week. Police and fire don't work an eight-hour day. There are exceptions and exemptions today. I think for harmony in the workplace you, as the person in that workplace and involved in the collective agreement, have a duty and a right to make the best decisions for the hospitality industry or seasonal work, like Christmas rush at the post office; you don't man up. Could you respond to flexibility in that context. Do you think it's a good idea to have flexibility in the workplace and certainly input from both union and management of the workers?

Mr Borch: Not when that flexibility erodes basic rights, and that's a problem.

Mr O'Toole: No, no, no. Clause 3 clearly says "no less than." I think with all our smart people in Canada and in Ontario today, if I read section 3 it's very clear; it says in there if the agreement "confers greater rights." I think we can codify and quantify those rights. In a collective agreement they do it every day for relief time, sub time, vacation time; it's all codified. So don't tell me that with all the intelligence today in the unions and very competent leadership, they can't in their own workplaces quantify and codify these equalities so that there are no fewer rights for the individual worker. There will be different hours of work and tradeoffs, more time off from the workplace perhaps instead of overtime.

Mr Borch: Yes, it would be Utopia, I'm sure, in your eyes, but certainly —

Mr O'Toole: We'll get there.

Mr Borch: If you'll let me finish my answer, the fact is that the basic rights in Ontario will be eroded, because right now you have guarantees that cannot be fallen below. What you're doing here is laying a loophole for employers to ease out of those things. One round of negotiations they may take out two articles, the next round they'll pick out the other two articles, but in the end there will be a lesser standard of living for workers in Ontario and for society as a whole in Ontario.

The Chair: Thank you, Mr Borch. We appreciate your taking the time to come before us here today.

DONNELLY COMMUNICATIONS AND COMMUNITY DEVELOPMENT (TORONTO)

The Chair: That takes us to the last presentation of the day, Donnelly Communications and Community Development, Mr Don Young. Good afternoon.

Mr Don Young: Thank you very much for giving me the opportunity to speak to you today. My name is Don Young and I'm a consultant in communications and community development. I work with government and non-government agencies primarily. Most of my working

life has been spent in the third sector or the social economy. I'm also one of those who feel that the Employment Standards Act is one of the pillars of our economic system.

Bill 49 is supposed to improve the Employment Standards Act, but in its present form it will do two things. It will provide maximum freedom and flexibility for owners and employers by making all employment standards negotiable. The definition of "standard" in the Shorter Oxford English Dictionary is "the authorized exemplar of a unit of measure or weight," like a foot, a pound, an inch, or the number of hours in a workweek. If standards are negotiable, then standards don't exist. As you've heard many speakers mention, it will weaken the position of unionized and non-unionized employees. I won't go into that right now.

The Progressive Conservatives want a revolution. Any party that calls its political movement a revolution has to live with the consequences. I'm not going to comment on the Common Sense ideology, but I would like to label it as capitalist fundamentalism, and like any fundamentalism it is intolerant of other opinions. I'm sure that the Harrisites among you will not listen to me, but for the rest of you — for the NDP, for the Liberals and for the truly Progressive Conservatives — I would like to offer a word of warning. This is the same kind of thinking that brought us the first Industrial Revolution. You might say, "Great, back to basics." But do you really want to go back to the basic exploitative relationships of the 19th century and, I might remind you, to the many political revolutions and the vast environmental destruction which followed? Personally, I would not like to see a repeat of the 19th century. Once was bloody enough.

Recently I have attended large public meetings of several hundred people where single moms have spoken emotionally about the need for violence and everyone in the room understood what they meant and sympathized, maybe even empathized. These were not meetings of radicals. They consisted basically of the middle class, middle-aged and middle of the political spectrum, or at least what used to be considered middle before the abrupt turn to the right.

No, I'm not going to talk about the politics of the Harris Conservatives because the consequences of their actions will soon present themselves most ineloquently. Harris wants government to step back and give free rein to private interests. Without the leviathan of government we will soon have a Hobbesian war of all against all. From the beginning of this revolution I have said that all of the money that the Harrisites save by dismantling our social safety net will eventually be spent on policing. I was interested to hear that Harris plans to build super-prisons. In light of the Conservatives' other policies, this is a good idea. As in the States, when you have a significant percentage of your population in prison, it keeps your unemployment figures down.

1750

No, I'm not going to talk about the politics, although I'm tempted to, but I'm going to talk about the economy under this particular piece of legislation. At a time when our economy is under attack by those who can mass-produce more cheaply elsewhere and when the true cost

of transportation is not even factored into the price; at a time when we should be trying to make better things more efficiently rather than the same things more cheaply; at a time when everything is measured by its price and not by its true value; at a time when Canada and Ontario are becoming hourglass societies with the middle class disappearing down the funnel into a rapidly growing lower class; at a time when we cannot provide decent entry level employment for our young people and they are forced to join a disaffected underclass; at a time like this we should be raising standards, not making them negotiable. When you have nothing to bargain with, it only means a race to the bottom.

Why can't we enter the race to the top? The opportunity to change the Employment Standards Act should be welcomed by all progressive people. As in the past, during periods of chronic unemployment and economic crisis, we should be sharing out the work, making sure that everyone can earn enough to live. In this way we build a sound and sustainable economy, support civil society and our democratic political system.

The problem is that we have too much work for a few and not enough work for many. Some people are now working 60 or more hours a week to make ends meet and don't have time to enjoy the money they make. Many are unable to manage their work, personal, family and community responsibilities. This time squeeze has negative effects on mental and physical health. In Japan, deaths from overwork have become a chronic problem. Meanwhile, the number of unemployed and underemployed is rising.

Ontario is facing a jobs crisis of major proportions. The unemployed, the underemployed and the young are feeling increasingly marginalized and without hope for the future. The latest official statistics have climbed into the double digits and the real unemployment figures are about 50% higher. The official rate for youth is about 17% and estimated as high as 27%. Neither growth nor conservative economic policies have led to more jobs. Historically, a shorter work time has.

Between 1800 and 1950, the standard work week was reduced by an average of three hours every decade. Sharing the work ensured that labour-saving technology created leisure, not unemployment. After the Second World War, we abandoned this winning and proven strategy. Canada's level of unemployment has risen by about 2% a decade ever since.

None of these figures accounts for the growing army of the underemployed. In the past few years, I have met people working, even for the province, on three-month contracts which might or might not be renewed. In this way the government ministries do not have to apply the employment standards, provide benefits or give statutory holidays. Since then I have discovered that this is common practice in the private sector. Instead of employees, many companies have individual subcontractors or temps who have virtually no rights. Large corporations maintain absolute flexibility by out-sourcing grunt work to free-trade zones in the Third World and keep an army of overqualified, underpaid short-timers here to check and correct the substandard work.

The bottom has already fallen out of the job market and employment standards are dropping. The unemployment figures, which are already higher than they have been in years, do not tell the story of the growing number of underemployed and underpaid who are trying to earn a living under any conditions. Then there are the many who have simply dropped out and have joined the underground economy.

A balance between those who want to work more and those who would like to work less must be restored, along with a domestic balance between production and consumption. While exports are driving our current growth, domestic consumption is flat. But can we count on export markets indefinitely? When unemployment rises, consumer confidence declines. It is no accident that in recent years the number of bankruptcies in Ontario has increased dramatically.

Yes, we need a revolution, but a revolution to increase the quality of life for people of Ontario, not the quantity of things they can buy someplace else. We need permanent full-time work for as many people as possible and the security to afford well-made, environmentally friendly domestic products. One element in this new economic strategy is higher and stronger employment standards.

Therefore, I modestly propose that the following be included in any revision of the Ontario Employment Standards Act:

A reduction of the workweek from the current 48-hour maximum to a maximum of 44 hours per week; overtime of time and a half to paid after 40 hours.

An end to employers' exemptions from any maximum, as well as an end to the agreements between employees and employers to exceed any maximum. Exceptions should only be made in cases of emergency and in specific fields of work, as in the current act.

The limiting of overtime to a maximum yearly amount for each employee is another alternative. As long as this annual maximum is not exceeded, there could be flexibility in the way overtime is calculated; ie, overtime could be taken off in vacation or personal time in lieu of pay. Employees should also be given the right to take time in lieu.

The length of the standard vacation with pay should be increased from two to three weeks.

Whether they are temps, part-timers or on short-term contracts, the rights of all workers must be protected.

Last, but not least, the enforcement of standards should be strengthened, not weakened, and a public education program should be carried out to inform employees of their rights and employers of their obligations.

The North American free trade agreement and the rule of the Harrisites seem to have started a race to the bottom in terms of standards. I hope the members of this committee choose to do something to stop it.

Mr Hoy: Thank you for your presentation. You have examples and some philosophical approaches to your presentation as well. You talk about the underemployed and the young. There was a time when employers confided in me that people were cheating on their applications and stating they had more education than they actually had to get jobs. Now I'm hearing that the reverse is true: In hopes of getting a job, people are saying that they maybe don't have a PhD, or whatever degree it

might be, so they don't appear to be overqualified. The fear of the employer is that if they ever had the chance to work where they actually were trained for they would leave. It is a changing time indeed.

You talk about overtime. I've had presentations from the public to me that they're not receiving overtime but yet do not complain about it for fear of losing their job. Your call for more enforcement would certainly help that out.

Mr Young: Yes. I think it's also important to have an education program. As was mentioned earlier, there are people who don't know what their rights are and I think it's very important that a public education program be conducted so people actually know what their rights are.

Mr Christopherson: I join my colleague in complimenting you on an interesting brief and the presentation going in the specifics of what the government's offering. In the context of the broader philosophy, quite frankly, I think we need a little more of it so that all of this is understood in a context that's relevant. For those of us who are here and active in this business it's quite easy to see the whole agenda and to see the picture and where we're heading. There isn't much of what you've said that I would disagree with.

The one thing I would ask you to maybe focus on, because you say it in many ways, but not directly, just so it's there for Hansard for future reference — many who have come forward have suggested that this piece, as it

fits into the larger Tory agenda, is creating a society of haves and have-nots, that we're polarizing. I guess you referred to that when you talked about the hourglass. Can you just expand on that a little bit in terms of where you think we'll be in three, five, seven years if we continue with this kind of an agenda? What sort of society do you think we'll have vis-à-vis the one we used to have?

Mr Young: Obviously, if you're giving more power to the employers and taking away power from their employees, the bargaining position of the employees will decrease. I see on the broader agenda, as the previous speaker said, that we are attempting to compete with the lowest common denominator in terms of nations. We're trying to compete with the maquiladoras or the Brazils of the world, and what we should be doing is trying to compete with the Swedens and making products that people can be proud of having made and that are worth buying. I hope this agenda doesn't happen; I hope there is a turnaround, a rethinking. That's why I came today.

The Chair: Thank you, Mr Young. I appreciate your taking the time to come in before us here today.

Just a reminder to the committee members that the bus to Hamilton leaves promptly at 7 o'clock tomorrow morning from Queen's Park. If there's no other business to be conducted, this committee stands recessed until tomorrow morning, 9 o'clock, at the Sheraton hotel in Hamilton.

The committee adjourned at 1801.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Tuesday 20 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mardi 20 août 1996

The committee met at 0901 in the Sheraton Hotel, Hamilton.

EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

OAKVILLE CHAMBER OF COMMERCE

The Chair (Mr Steve Gilchrist): Good morning all and welcome to the second day of hearings on Bill 49. Our first group up this morning will be the Oakville Chamber of Commerce. Good morning, gentlemen.

Mr Peter Warmels: My name is Peter Warmels. I'm the president of the Oakville Chamber of Commerce this year.

Mr Don Crossley: Don Crossley, executive vice-president of the Oakville Chamber of Commerce.

Mr Warmels: The Oakville Chamber of Commerce is an organization representing more than 1,100 members. Members range in size from the Ford Motor Co to small business persons employing one to three people. We welcome the opportunity to address your standing committee with regard to Bill 49, the government's proposed employment standards improvement legislation.

The Oakville Chamber of Commerce congratulates the government on undertaking a two-stage reform of the Employment Standards Act and supports Bill 49 as a first step in the process. The act itself has been outdated due to legislation being added over the years without a complete inquiry into its underlying framework. Our chamber awaits the second phase of reform and supports the stated goals of promoting greater flexibility among the workplace parties.

Our chamber supports your three goals outlined in Bill 49: to allow the Ministry of Labour to administer the act more efficiently; to promote self-reliance and flexibility among the workplace parties; and to simplify and improve some of the language in the act. We believe that in doing so the bill continues to protect minimum employment standards for employees and workers.

The Oakville chamber is very supportive of the provisions of Bill 49 which eliminate duplicate claims, limits recovery of money to a six-month period and extends the appeal period. Employers are increasingly faced with defending claims of the same nature or for the same remedy in multiple forms. Non-unionized

employees are able to have employment standards disputes dealt with by the courts in wrongful dismissal actions as well as by the employment standards branch. Unionized employees are able to file grievances under the collective agreement to be dealt with in a grievance and arbitration process, and may also file claims with the employment standards branch. This should avoid employers having to defend the same dispute in multiple forms and duplicating their costs. In our opinion, the public purse is often unfairly burdened in this manner.

The proposed provision of the act limiting the entitlement to recover money to six months instead of two years places the onus on employees to make complaints in a timely manner. In our opinion, the more time that elapses with a complaint, the more difficult will be the investigation and, as a consequence, increased costs to both parties.

The increased appeal period, from 15 to 45 days, provides for a more reasonable time in which to allow the parties to negotiate a settlement in lieu of an appeal, more carefully consider the merits of filing an appeal and make the necessary payment of the amount of the order and administration cost to the director to apply for the appeal. The current 15-day period in which to make the payment causes an unnecessary hardship to employers.

Our concerns: Notwithstanding our support in general of Bill 49, we pose the following questions, all dealing with section 20 of the bill, regarding enforcement of the act through the grievance and arbitration procedure.

Question 1: Is it appropriate to grant arbitrators the power to make an order that any employment standards officer is able to make? Our chamber believes that the arbitrator should not be taking on this role, as an arbitration hearing will only take place after the various steps of the grievance procedure have been concluded.

Question 2: What is the process to appeal/review an arbitration decision enforcing the act? The act is unclear about whether any arbitration decision may be appealed or if it is in fact final and binding.

Question 3: Do time lines in the act or the collective agreement prevail? All collective agreements set out time lines in the grievance process and must be filed and processed, but in many cases these time lines will be different than those in the act. Our chamber believes that collective agreement time lines should prevail to ensure consistency.

Question 4: Is the arbitrator's ability to award damages restricted by the six-month recovery limit? It is not clear from the proposed amendments if this is the case.

Finally, the chamber would support moving the provisions of Bill 49 allowing for a greater right or benefit assessment as a package to the second phase of

reform. Our chamber strongly believes that allowing for a greater right or benefit as a package is an important component of allowing workplace parties the freedom to mutually agree to arrangements which, if viewed separately, would not be in compliance with the act.

In conclusion, the Oakville Chamber of Commerce supports the two-stage Employment Standards Act reform process and supports Bill 49 as the initial step in that process. We urge you to consider the questions we have raised to clarify certain of the proposed amendments. We thank you for allowing us the opportunity to appear before your committee today.

Mr Dwight Duncan (Windsor-Walkerville): Thank you for your presentation. The issue around arbitration is now coming up repeatedly with a number of business interests across the province. I wonder if it wouldn't be your view that perhaps the government might want to take the arbitration clauses out of the bill and deal with them in the second part of the process. Would you think that would be a prudent step on the part of the government?

Mr Warmels: I think the process of dealing with the appeal process certainly requires a lot of review, and if it can't be dealt with in the first step, then the second step may be more appropriate — wherever the most thorough degree of review can be taken, whether it's in the first or the second step.

Mr Duncan: The nature of your comments on the arbitration indicate to me that you would contemplate amendments to the bill as proposed that would substantially alter the government's intent. Would it be your recommendation that the government, prior to adopting this legislation, at the very least consider amendments to the arbitration, and if it's not prepared to consider amendments to the arbitration clauses, then deal with them in the second phase?

Mr Warmels: Yes.

Mr David Christopherson (Hamilton Centre): Thank you for your presentation; appreciate it. I noted on the second page, sixth paragraph, "We believe in so doing the bill continues to protect minimum employment standards for workers." I have some difficulty appreciating how that can be if you accept that right now the minimum is there is no cap on the amount of money that a worker can claim for, there's no minimum threshold they have to cross to be eligible to make a claim. They're losing the ability to claim for up to two years; it only goes to six months. With those losses of minimum protections that workers have now, how does that square with making the statement that you believe the bill will still continue to protect those very minimum standards that no longer exist?

0910

Mr Crossley: I think that whenever you are taking a review process on something of this magnitude, there are a number of issues that have to be addressed. I don't disagree with what you're saying. We attempted, from our vantage point, to do the best we could in the time allowed to come up with what we felt were some solid questions that needed answering. I'm sure if we had studied it for another month, we probably would have come up with more and perhaps reached some of your

conclusions. But in a general way, we feel a general level of comfort with what we've suggested today.

Mr Christopherson: I would just express that part of the concern of my colleagues and I is that a general level of understanding or acceptance is really difficult when the Employment Standards Act is the only real bill of rights that workers have and the government maintains that there are no losses and, I think I've pointed out clearly, there already are losses.

To the parliamentary assistant, maybe the fact you didn't have enough time would point to the fact that maybe this whole thing should have been put off for the year-long review, bearing in mind that the government tried to ram this through in just a few weeks last session.

My other question to you would be over on the next page. It says, "The proposed provision of the act limit the entitlement to recover money in six months instead of two years places the onus on employees to make complaints in a timely manner." I can appreciate that train of thought, but we've already heard evidence yesterday in Toronto from groups representing particularly visible minorities, women, people whose first language isn't necessarily English — in other words, the most vulnerable — non-union shops, where there are unscrupulous employers. I know that you wouldn't support employer who violate the laws, and I believe that's a sincere position on your part, but what we've heard is that there are an awful lot of these workers who are so fearful of losing their jobs and have so few other opportunities for employment that they don't make claims until, quite frankly, they've either been fired or quit out of frustration or have another opportunity to go to another job. But with this change in the legislation, they've lost the right to claim for a year and a half of money that's owed them; money they've already worked for. Again, how would you square the benefit that you see as an employer with the rights that the workers are losing?

Mr Crossley: I would suggest that there are still vehicles in place so that this process can be dealt with with due diligence in a six-month time frame. I do not think you need two years.

Mr Joseph N. Tascona (Simcoe Centre): Thank you very much for your presentation. There is one area I want to explore with you. Essentially the standards that govern employment are not being affected by this act, except for pregnancy leave and vacation leave, which are being clarified. What we're dealing with are administrative and procedural changes.

I just want to comment with respect to your concern about the arbitrator's powers, because as you know, we're looking at putting the resolution process between unions and the employer through the collective agreement process. From what I can see of your questions, is it your concern that you want to make sure that the arbitrator's powers are limited to the purpose and rights that are given under the Employment Standards Act and no further?

Mr Warmels: Yes, I certainly do. The arbitrators, even today, have an immense amount of power in the decision-making process, and the consistency with which their decisions are applied throughout the process is difficult to comprehend at times. I think they need a

support of some sort to back up the decisions they make, particularly when it comes to the process we're dealing with today. Even considering that there is an appeal process in place, arbitrators — and we're concerned — may be allowed to make the final decision.

Mr Tascona: But within the context and the rights that are provided under the act, that would be fine with yourself?

Mr Warmels: Certainly, but the act can always be interpreted differently by arbitrators from one to another.

Mr Tascona: With respect to the cap, up to 1991 the cap for claims was \$4,000, and then it was changed to be unlimited. Now we're back at \$10,000. Do you feel that's a reasonable limitation, given the balancing with respect to the ability to enforce the act and also deal with the resources the government has to deal with this type of legislation?

Mr Warmels: I'm not here prepared to specifically comment to the amount of a cap. I firmly believe that a cap is necessary. I firmly believe that providing a timely process, ie, within the six-month period, would allow for that cap to be administered much more effectively than if there was no time limit on the due process that's to be taking place.

The Chair: Thank you, gentlemen, for coming and making your presentation before us here today. We appreciate it.

Mr Warmels: Thank you.

HAMILTON AND DISTRICT LABOUR COUNCIL

The Chair: Our next group up will be the Hamilton and District Labour Council. Good morning, gentlemen. Again, we have 15 minutes for you to divide as you see fit between your presentation or a question-and-answer period. Once you're settled in there, I wonder if you'd introduce yourselves for Hansard as well, please.

Mr Wayne Marston: I'm Wayne Marston. I'm president of the Hamilton and District Labour Council. With me today is Darren Green, who is the chair of the political action committee of the labour council. Darren's actually going to present the brief to you, but just prior to that, there's a couple of observations I would like to make.

First of all, I'd like to thank the committee, of course, for the opportunity to present to you. For the record, the Hamilton and District Labour Council represents some 40,000 workers in the city of Hamilton, of course along with their families.

But one matter I'd like to deal with, I'd like the visitors in the gallery who are not with labour unions to raise their hands. Would you, please? Now, those that are with labour unions, please raise your hands. The reason I'm doing that is to be very clear with you that labour hasn't somehow stacked this room. I just wanted to get that point across. What we do have with us are a number of concerned citizens that were at a breakfast with us this morning. We had a bit of a meeting with them in advance. I just thought that that was important for the record: to see that there is a balance between unionized and non-unionized workers' concerns with Bill 49.

I've been following this provincial government's actions in ramming through Bill 7 and attempting to do the same with Bill 26. It's not overly surprising to us to see Bill 49 surface and some of the changes that are proposed in it. But I wonder, for one, if this government has considered an action that took place here in the city of Hamilton in February, when 100,000 people came on the streets of Hamilton. Now, that was one out of every 75 people in the province of Ontario. You should ask yourself what would cause people concern enough to come out to protest. What they were trying to do simply was to get the ear of their government. Those concerns were based on what they anticipated would happen with this government, not what has come to fruition so far. Especially with these proposed changes contained in Bill 49, they're realizing some of their worst fears.

The labour council's brief points to the fact that the changes proposed in Bill 49 take away many of the basic rights workers have enjoyed for many years, rights which helped ensure them some dignity on the job. Unionized workplaces will continue to have, as a result of a strong collective agreement, that sense of dignity still.

There will be significant pressures put on unionized workers, and I understand just yesterday the minister deferred some aspects of Bill 49 to a later date. The more cynical people out there say that that was being done because of the fact that they felt that it would pull labour away from the table at these hearings. I can tell you very clearly that for those who may not know much about labour, we have a couple of defining principles, and one of those is an injury to one is an injury to all, and that does not mean simply unionized workers. Our concerns are across the community for all workers.

At this point I'll ask Brother Green to present the brief to you.

Mr Darren Green: I'll start with the background. When the Minister of Labour, Elizabeth Witmer, introduced Bill 49 in the Legislature, she advised members present that the bill was intended to only streamline the act and encourage compliance and simplify administration. The reality of Bill 49 is that it has far greater implications than simple housekeeping. The Hamilton and District Labour Council believes these changes will continue the trend established by Bill 7 and further erode the workers' rights, to the benefit of their employers.

0920

The fairness and balance in the workplace sought by such groups as women workers, minority workers, food processors and servers, home workers and domestic workers will be dealt a serious setback by the provisions in Bill 49.

The Employment Standards Act was originally intended to provide a floor of rights for the workers of the province of Ontario, and with the passage of Bill 49, Ontario workers will find much of that floor has crumbled away beneath their feet. The Employment Standards Act, as it existed in the past, has been notorious for its weakness and also for the lack of enforcement by the Ministry of Labour. There are estimates that one in three employers violate the basic standards contained in the act. This can certainly be attributed to the lack of enforcement.

The Hamilton and District Labour Council believes that these same dishonest employers will, as a result of the provisions of Bill 49, have a relatively free hand to continue to coerce and abuse their employees.

Mrs Witmer said that the bill was simply housecleaning. We don't think so. The following is a short list of some of the impacts expected following the passage of Bill 49:

Bill 49 causes workers to forfeit their rights in order to simply keep their jobs. It gives employers an open season to continue to violate the act. It further neuters the act by wiping out the floor of basic rights for both non-union and union workers. It caps the amount of money a worker can claim from their employer to \$10,000. It shortens the period a worker has to file a claim. It forces workers to seek a resolution from the courts without the support of a legal aid. It gives collection agencies a power to negotiate settlements lower than the minimum.

Employment standards are no longer seen as minimums. In the past, under the Employment Standards Act, in the areas such as minimum wages, public holidays, vacations, hours of work, notice of termination and severance pay workers had a guarantee of a minimum set of terms and conditions of employment. The employment standards set out in section 4 of the act were minimum requirements. It was not possible to waive an employment standard, and when the amendments proposed under Bill 49 are enacted, this will change significantly.

Under subsection 4(3) it will read, "A collective agreement prevails over section 58 and parts IV, VI, VII and VIII of the act if the collective agreement confers greater rights relating to hours of work, overtime pay, public holidays, vacations with pay and severance pay than the act confers, when those matters are assessed together."

The blatant loss for workers contained in this section is clear. As long as the overall benefit package is deemed to confer greater rights than currently contained in their existing collective agreement, it becomes acceptable that some areas of the package may offer less than the standard protections. This particular change, in the opinion of the Hamilton and District Labour Council, will open the door to tremendous pressures from employers for regressive changes to the existing collective agreements.

The Ontario government has set about deregulating the workplaces of this province, which begs the question, has anyone in the government really asked themselves why the regulations were enacted in the first place? And as well, why aren't workers across the province of Ontario celebrating the so-called flexible standards proposed in section 3 of the bill? The answer should be obvious. It is because they can clearly see a significant erosion of their rights.

Complaints become grievances under Bill 49. The changes to enforcement contained in Bill 49, section 20, will further damage relationships between employers and their workers when nearly every significant issue, such as workplace closure, severance and termination pay, must be subjected to the grievance process. The offloading to the union and the employer of the important investigative

and enforcement powers of the Ministry of Labour will cost both parties dearly in terms of dollars and lost productivity.

Subsection 64.5(2) of the act will read, "An employee to whom a collective agreement applies...is not entitled to file or maintain a complaint under the act." This includes an employee who is not a member of a trade union.

When enacted, this section will mean instead of having access to the act to resolve a problem, both employer and workers must do so within the grievance procedure contained in their collective agreement. This change, in effect, will force unions and employers to resolve the most basic of employment standards disputes through the costly grievance and arbitration procedure.

Other enforcement changes for non-unionized employees have set into motion the prospect of workers having to seek a resolution of their problems in the courts. We, as workers, know that accessing our courts is very costly and without a legal aid plan to assist them the average worker will not even be able to take advantage of this process. An example I would give to illustrate the problem would be the case of a clerical worker wrongly dismissed and who attempts to get restitution by going to the courts. Their lawyer fees alone may run between \$800 and \$1,200 a day, and should the case run three or four days, even if they win a settlement of three months' pay at \$5,000, they would still lose. A worse case would be if they lost the case and faced the prospect of paying the legal fees of their employer. Ordinary workers faced with such risks will not be able to proceed with an action, even if they are in the right. Because of Bill 49, they'll find it necessary to accept the bare minimum as allowed under a claim to the Ministry of Labour.

The use of private collectors, as laid out in section 21 of the bill, will further remove the Ministry of Labour from its duty to enforce the act when employers refuse to pay for their violations. Now Bill 49 proposes to transfer the collection function of the Ministry of Labour's employment practices branch to private collectors. Such a move will further complicate the possibility of a worker receiving what is due them, and in some cases will ensure they do not receive any money at all. A case in point would be, a person close to or below the minimum wage could be expected to pay a collector's fee. In other words, they would have been victimized by the employer and now they are being victimized by their own government. The workers of Ontario deserve better from their government.

There are some positives to Bill 49 that the labour council sees in the area of vacation entitlement of two weeks and the fact it will accrue even if the employee has missed some time due to illness or a leave of absence. In addition, the changes to seniority rights and service during leaves of absence, such as parental and pregnancy leaves, which will now be included in the calculations of length of employment, service or seniority are also positive.

In conclusion of my part of the brief, the Hamilton and District Labour Council strongly urges the committee to recommend the government scrap Bill 49 and then to work to provide education to employers and workers as

to the rights under the Employment Standards Act as it exists and to use the resources of the Ministry of Labour to enforce workers' rights, not weaken them. We believe a critical piece to building and maintaining a solid and productive workforce is the development and enforcement of a progressive Employment Standards Act, not the erosion of the act as proposed in Bill 49 and certainly not by the Ministry of Labour abdicating its responsibilities to the private sector.

Mr Marston: Just a couple of comments to add to that. As the result of the changes proposed in Bill 49, workers in both union and non-union shops will be confronted by employers and managers who demand more flexible terms of employment. It's very clear that the minister withdrew some things yesterday that are addressed in this brief, but it's because those issues are important and the fact that the bill even looked at them in the first place that we decided to continue with our brief and speak to them.

The expectation of more flexibility would open the door to a deterioration of working conditions and relationships between workers and their managers. One of the things that we've had for a number of years is relative labour peace in the province of Ontario. We could, from different philosophical views of the reasons for that, propose that Bill 40 helped us extensively and there are other areas of legislation in the past that did, but clearly that is at risk with Bill 49.

The types of changes, if enacted, would succeed in sending labour-management relations in this province back to the pre-Second World War era. In this community, that era led us to the great strike of 1946. I, for one, am very saddened that we have in this province people, who 50 years ago stood in those picket lines to fight for basic human rights for workers, who see this government forcing their grandchildren back towards those kinds of rights. The question that I have to ask is: Just how far is this government prepared to go with taking away rights?

I will say one thing to you: If you're eyeing the idea of a free trade zone in the province of Ontario, you're in for one hell of a fight. We know, from the perspective of workers, that under the free trade agreement there was a certain call for harmonization of laws with the United States, but it even appears that this government's prepared to take that even further and perhaps harmonize with Mexico. The workers of this province, both unionized and non-unionized, deserve better than that. They deserve better than their government turning on them.

The Chair: Thank you, gentlemen. We have one and a half minutes and under the rules we had set up, that will allow one question. So, again, the first up this round would be the official opposition.

Mr Duncan: Yes, just —

Interjection.

The Chair: We've been doing the same thing. We went all the way around there, so we now start with them again.

Mr Duncan: Did you want a question? I'll yield —

Mr Christopherson: We ran into this yesterday too. We started with the official opposition, we had one presentation. Now we've had the second presentation, so in rotation —

The Chair: But we've been rotating so that the total time each day, reflecting that the 15 minutes in most cases won't allow three questions.

0930

Mr Christopherson: Then could I respectfully request during the gap that's there in the schedule a quick meeting of the subcommittee to straighten this out —

The Chair: No problem.

Mr Christopherson: — because I'm not satisfied with the way this is going.

The Chair: Fine. Mr Duncan has yielded to you in this round, if you like.

Mr Christopherson: I appreciate that very much, but I would still request a meeting.

Interjection.

Mr Christopherson: That's a valid concern.

The Chair: Okay.

Mr Christopherson: Thank you very much for the presentation, Wayne and Darren. I want to ask you one question. There has not yet been an employers' group that's come forward, including the one from this morning, that hasn't said in their presentation that they believe workers' rights are being protected and therefore they're giving their full support to Bill 49. I'd like to give you an opportunity to go on the record with Hansard as to why you believe that minimum rights and standards are being lost under Bill 49 in a very direct way.

Mr Marston: It's very clear that there is a move to empower employers even beyond what they had traditionally in the workplace. The sad part of it is, from our perspective, that for many reasons under the existing legislation and the enforcement that was there, there were already abuses in the workplace, and this further takes away the dignity of workers in those workplaces.

Mr Christopherson: If I can then, to wrap up, I just want to compliment my own home-town labour council for the job it's doing representing the working women and men of this community. I think you do an excellent job and I appreciate everybody being here to explain it, Darren.

The Chair: Yes, and I'd like to thank you, gentlemen. As you put on the record, I'd like to put on the record that we appreciate the people who have taken the time to come out here today and participate in this process. That's the whole point of going around the province, and we appreciate the time you've taken to come and make a presentation before us here today.

Mr Marston: That opens the door to one more comment. I sure hope that this government continues to have public hearings on every piece of legislation. Thank you.

SOCIAL PLANNING AND RESEARCH COUNCIL OF HAMILTON-WENTWORTH

The Chair: That leads us to our next group, the Social Planning and Research Council of Hamilton-Wentworth. Good morning. If you would be kind enough to introduce yourself for the benefit of the Hansard reporter.

Dr Charlotte Yates: Perhaps to start with we should say that the name on the agenda of the presenter is clearly not either of us, as it's a man and there are two

women sitting here. We are both executive board members of the Social Planning and Research Council of Hamilton-Wentworth. This is Sharon Smikle, and I am Charlotte Yates. We will be jointly presenting the SPRC's presentation.

Ms Sharon Smikle: The Employment Standards Act established in 1968 was introduced to ensure minimum labour standards. Since that time, the act has helped contribute to a level playing field upon which employees and employers can negotiate by establishing standards in employment agreements regarding hours of work, overtime pay, public holidays, paid vacation, pregnancy and parental leave and severance pay.

Originally, the employment standards were put in place to protect women, children and the most vulnerable of workers. Nineteenth-century legislation was initially implemented to ensure appropriate health and safety measures in the workplace. In the years following, the minimum wage was established for the protection of underpaid women and children. Hours of work also became regulated. These pieces of law were consolidated to yield the Employment Standards Act. This law not only benefited workers and their families but also profited employers, as workers proved to be more productive under good working conditions.

The provincial government is proposing to make slight changes to improve employment standards in Ontario through Bill 49, the Employment Standards Improvement Act. We believe these significant changes will erode the effectiveness of the act and diminish the rights of workers. The impact of flexible minimum standards, limitations placed on the rights of workers to back wages, the enforcement of employment standards and the use of private collectors to recover money owed to employees will do little to improve working condition or the productivity of the Ontario labour force. There is concern that this bill will make exploitation not only possible but legislated. The ongoing restructuring of our labour market continues to increase the amount of power employers have over workers, and Bill 49 further reduces the capacity of the worker to secure quality work and a living wage.

The government promises that Bill 49 will make the act more relevant to the needs of the workplace and protect the most vulnerable workers. However, in light of the current environment and the erosion of our social safety net, we insist that the strict enforcement of the existing Employment Standards Act is what is relevant to workers, more now than ever before.

Currently, Statistics Canada reports unemployment rates will continue to rise, but these statistics fail to count the large number of people who have been laid off or are no longer looking for work or the growing number of people on social assistance. This large pool of unemployed or underemployed labour acts to keep wage levels low and workers from leaving their jobs, regardless of the conditions in which they work.

Under Bill 49, the situation will worsen by diminishing the collective ability of workers to voice their concerns. Under Bill 40, employers are now able to bring in labourers to replace striking workers. This effectively eliminates the only tool workers have to reach fair employment agreements — their labour — and those

workers without the protection of a union must be their own advocates, knowing that if they make too many waves, there are hundreds waiting for their own job.

The changes proposed in Bill 49:

Flexibility of minimum standards: Bill 49 will allow employees and employers to negotiate employment contracts below current minimum standards of hours of work, overtime pay, public holidays, paid vacation and severance pay. This is possible as long as the contract provided appears to have greater benefits than those under the Employment Standards Act.

This can be illustrated by the following example. Under Bill 49, employers will be given the legislated right to remove the two weeks' vacation in exchange for additional severance pay. This agreement may seem more attractive than the other under the Employment Standards Act, but upon closer examination, employers will find it easy to offer severance pay at the time when people are in no position to leave their current employment, and for workers who are desperate to find work, they are in little position to be bargaining.

This and other scenarios will be possible because there is nothing in Bill 49 that states how the value of a particular benefit will be determined over another, and there is nothing that states who will determine the value of what each benefit is worth. Although the province has promised to table this section of the bill until the fall, the following concerns need to be addressed, regardless of whether it is brought forth now or later.

Agreement on the value of non-monetary benefits is virtually impossible to obtain, as individual workers and employers will place different degrees of value on these rights and benefits. Who will determine whether an individual employee will have input into this contract, especially in this period of high unemployment when employers have significantly more leverage to make that call than their employees?

Employers need to carefully consider Bill 49. Studies have found that work hierarchy and organization has a profound effect on the health status of populations. By eroding the rights and control a worker has over his environment, an employer will face the costs incurred through reduced productivity and increased absenteeism. Moreover, this will cause unrest and ensure that the relations between employer and employee remain acrimonious.

Dr Yates: Maximum restriction on claims and enforcement of employment standards: Under the current act, workers can choose to file a claim against an employer for back wages under the employment standards branch of the Ministry of Labour, in civil General Division court or in both. While this system is far from perfect, requiring employees to wait unreasonable amounts of time for even the employment standards branch decision, it does ensure that an employee's right to receive all the money to which they are entitled is met.

Under Bill 49, the employee must now choose between filing a complaint under the ESA or with General Division court. The benefit of an ESA claim is that it will be processed somewhat more expeditiously, but the drawbacks are that this claim is restricted to six months of back wages and a maximum settlement of \$10,000,

regardless of the period of time for which wages are owing or the amount owing. Under a civil claim, these restrictions do not apply, but the length of time of a civil case, as well as the cost of hiring a lawyer whose services would not be covered under legal aid, are prohibitive to many employees. Therefore, the employee is forced to choose between receiving what is rightfully owed to them and waiting years for the money, or receiving less than they deserve if they are in need of the money quickly or if they can't afford to pay for a lawyer. This bill forces a resource-poor employee to file a claim under the act because they cannot afford to hire a lawyer to sue in civil court and cannot wait for the money that is rightfully theirs.

0940

Since the government's stated purpose of this portion of Bill 49 is to streamline the process for cost-effectiveness, the question then becomes: Will this bill reduce government costs? In reality, it cannot. The added cost to the legal system will outweigh any savings to the Ministry of Labour, since the burden is merely being shifted from one body to another. Therefore, the changes to this section of the act do not appear to save taxpayers dollars but do appear to deny justice to the most vulnerable of workers.

Privatization of collection: Enforcement of employment standards decisions and the collection of money owing to employees has always been a major problem with the act and within the Ministry of Labour. In 1994-95, of the \$64.3 million in wages found owing to employees, \$47.8 million was not collected, mainly due to employers' refusal to pay and the weak enforcement of the existing Employment Standards Act.

The government proposes to privatize the collection functions of the Ministry of Labour, thereby absolving itself of the responsibility to recover what is owed to workers of the province. But there is no guarantee that private collection agencies will be more successful than the ministry in collecting money. There is the possibility that collection agencies will exert more pressure on employees to accept less than they are owed, even under the maximum limit, to expeditiously process the claim so that they can then collect their fee. In the cases where the collector is unable to collect the full amount of money from the employer, their collection fees are to be paid out of the money owed to the employee. Considering the maximum limitation on money claimed and the ministry's previous track record in collecting money, it is likely that not only will employees receive less than they are entitled to receive, they will have to pay a user fee to collection agencies when employers refuse to pay the full amount of the claim settled under the act. Everyone wins in this situation except the employee.

Our summary: Does Bill 49 improve work relations or reduce the cost of enforcement of employment standards? Our analysis shows that it does not. The Employment Standards Improvement Act is anything but an improvement. At present, there are 20,000 formal complaints made annually, alleging violations of the Employment Standards Act. We believe that with Bill 49, the number of violations will increase. Bill 49 will have a negative impact on working conditions and will erode the employ-

ment standards Ontarians have struggled to develop over the last 50 years. In a society battered by constant change and downsizing, it is essential that legislation protects the rights of all working people, who find it increasingly difficult to protect themselves. We feel that these changes, combined with anticipated changes to the Occupational Health and Safety Act and Workers' Compensation Act, will make Ontario a harsh and a dangerous place to work.

The Chair: Thank you both. That leaves us with just over four minutes, and we'll start this round with the government.

Mrs Barbara Fisher (Bruce): Thank you very much for your presentation this morning. I have a question, though. In one of our presentations yesterday in Toronto, we heard a very serious and significant, impassioned plea by a woman who, quite frankly, has been mistreated by the system. I acknowledge in your presentation that we agree that collection hasn't been on the best side of the employee's benefit in the past. As a matter of fact, I think you used the number that \$47.8 million last year remained uncollected. That's probably living proof that the system isn't working the way it was, and for the intervenor yesterday, that's exactly what she confirmed. She had an impassioned plea: "Please do something." This is a multi-year issue; it's not just yesterday.

Would it not seem reasonable, then, seeing as the responsibilities for collection were even minimized in the last government's efforts because of layoff of staff on collection and absorbing that into other responsibilities of ministry staff, that perhaps attention wasn't being paid as it should? The government, as is presented in the bill, sees that perhaps there's another way to do this. Would it not seem reasonable to give that a try before somebody would say, in fact, it won't work, seeing as the other systems haven't worked in the past?

Dr Yates: I agree with you that there have been many problems in fact, not even in the last two but five or 10 years. There have always been problems with collections of employment standards since they were first developed. Part of that has been the low level of people responsible within the government for actually going out and dealing with employment standards complaints. Therefore, I think there is room for looking at new ways of doing things and doing them better so that you protect employees.

I think the concern, and I think a reasonable concern of the Social Planning and Research Council, is that to privatize the collection is not necessarily the answer. There are a series of anticipated problems, which we haven't gone into in great detail here, that we would anticipate from privatizing. For example, if there's a conflict of interest between a private collection agency and an employer, is there any body through which employees can ensure that their interests are being protected when you've privatized it to a business which may have links with other employers? Collection agencies are involved in all facets of business, not just in the collection of money, so that is just one example of a potential problem with privatizing the system.

Having said that, while I agree there's a need for experimentation, the question is how you experiment and the type of changes that you implement. It suggests to me

that privatization is not necessarily the route to go, and to experiment without trying to anticipate a little bit what those effects will be would be seriously detrimental to employees.

Mrs Fisher: In closing, I would just add that her plea was, "Government can't do it for me, hasn't done it for me," and I'm not just talking about a government, I'm talking about government in general has not been able to do it for me." I think one of the reasons that we so strongly support the effort to try this otherwise is exactly that reason.

Mr Pat Hoy (Essex-Kent): Thank you for your presentation. I want to follow up on the same line of thinking, that if the current system is not working well for employees, as you rather agree, in your brief you're saying that by reducing the benefits to employees in the hope that some other system will collect the moneys for them is not what you're looking for; 75% threshold, user fees, as you mention, is not the answer you're seeking from the government in the hope that they can get some moneys rather than the current system.

Dr Yates: I'm not sure what your question is.

Mr Hoy: If the current system is broke, the government's suggestion of going this route, with private collections, is not the answer you're seeking to a broken system. Is that correct?

Ms Smikle: I think that in the interest of fiscal responsibility, we've seen over the years that the government has been downsizing. So the people who are enforcing the employment practices legislation, the collections end of things, have been regionalized. With that move, I don't necessarily think that all of the collections effort or the effort to see if we can collect more expeditiously and go after those employers who are trying to get away from making payment to these employees has been exhausted.

I don't necessarily think that all the options that perhaps are out there have been exhausted. I think that regionalizing that end of things, in terms of the collections component, has not been the most effective. It wasn't effective before when it was done centrally, and certainly being spread out among the regions has not proven to be effective either. I think there might be other options, though, within government to do that.

The Chair: Thank you both. We've gone over our time, but we appreciate your taking the time to make a presentation before us today.

0950

HAMILTON DISTRICT CHAMBER OF COMMERCE

The Chair: The next group presenting this morning will be the Hamilton District Chamber of Commerce. Morning, folks. Again, we have 15 minutes for you to use as you see fit, if you'd be kind enough to introduce yourselves for Hansard, please.

Mr Lee Kirkby: Welcome to Hamilton. We're very pleased to have the committee here. Please come back in November for Grey Cup. We're trying to celebrate 150 years of success in this community and we like as many guests as we can through the course of the year.

My name is Lee Kirkby. I'm the executive director of the Hamilton District Chamber of Commerce. With me is

Sharon White, a member of our human resources committee and one of the people who has assisted us in putting our material together.

The Hamilton District Chamber of Commerce is the largest general business association in greater Hamilton. Its 975 members employ in excess of 50,000 persons within the regional area, ranging in size from one-person organizations to some of the area's largest employers both public and private. We are pleased to be able to make comment upon the proposed changes to the Employment Standards Act and the process undertaken to address this important legislation.

In the past year and a half, we have seen our membership grow substantially. This expanded base of involvement has brought with it a sense of promise, excitement and new enterprise which has been coupled to the substantial expertise and success of the restructured organizations which were the traditional base of greater Hamilton. There are several characteristics of the organizations we see today which have application to the issue covered under the employment standards legislation.

Today's businesses are generally smaller than those of the past decades. We see businesses of from two to 20 employees as a much larger part of the general economy. Most of these organizations do not have specialized human resource professionals involved in their operations.

Many organizations are virtual corporations. This type of organization is more of a cooperative than a traditional company. There are no employees, only contract individuals and groups who carry out specific functions for the organization. Some are groups of individuals who come together for marketing purposes but operate independently for other aspects of the enterprise.

Increasingly those enterprises which focus on export markets or which provide services to enterprises with an export focus are the ones which are growing and prospering. They find that their operating hours and time frames are very different from our traditional models.

The chamber is supportive of the government's action in initiating a two-stage reform of the Employment Standards Act. This presents an opportunity to redefine this legislation, taking the realities and new needs of today's economy into account. The first steps which are proposed in Bill 49 are reasonable beginnings to a more comprehensive review in the second phase. We will be pleased to participate in that process as it unfolds.

We have been told by our employers and the professionals who advise them that the act as it currently operates is cumbersome and leads to unnecessary delay and expense for all parties. Revisions are needed.

It is difficult to object to the government's first objective, seeking for improved resource utilization by ministry personnel in administering the act. Proposals to use commercial processes for such items as collection of unpaid judgements are good examples of methods to utilize expertise appropriately.

The second objective, to promote self-reliance and flexibility among the workplace parties, is critical in light of the changed nature of today's workplace. The ability for the parties in the workplace to be able to determine the working relationship, to be able to effectively respond to their customers' needs, is a vital part of expanding our

economy. In absence of revisions to the legislation, the tendency to contract relationships will continue to grow. Recently one of our members described the unfortunate view which employers sometimes take in the following way, "The decision to hire an employee has become one which is a managed risk." If we do not make changes, this view will grow and prevail.

The third objective is to simplify and improve some of the act's language. This is a critical element in order to meet the first objective. Confused language and precedents make it impossible for the parties to understand and manage their relationship in light of the law. Administrative procedures for enforcement of the legislation must also be clear and understandable; otherwise we will see an increase in litigation, not the lessening, which everyone would desire.

Under the proposed amendments, employees in workplaces without a collective agreement will have to make a choice of whether they wish to commence an action before the courts or lay a complaint with the Ministry of Labour under the act. Only one of the two remedies will be available in each case.

We note that in the case of unionized employees under the proposals, where a collective agreement is in place, the amendments provide that only the grievance procedures under the collective agreement will be available for action. This effectively shifts the cost of the administration of the act on to the affected employer and union and stops the individual employee from seeking action through the ministry.

We have a question: Is it intended that the provisions of the act are to form a part of all collective agreements in the province? In other words, does it become an underlying clause within every collective agreement if this is the procedure to be followed?

While we strongly support the provisions which stop the use of multiple forums for the pursuit of individual cases, we would suggest that consideration be given to permitting the choice, in the case of the unionized employee, to be exercised as to the method of remedy at the commencement of a claim. This would parallel the choice which is provided in the non-union case.

There are several sections of the amendments which we think might benefit from further thought and review before enactment. Generally they relate to issues which appear to create the potential for confusion and subsequent litigation to clarify the application of the procedures.

1. Language relating to vacation entitlement: Section 8 of Bill 49, amending section 28 of the act, adds the clause to the first paragraph, "whether or not the employment was active employment." We are not certain whether this amendment is intended to provide that for every instance where an employee is absent from the employment environment, vacation entitlements shall be continuous. As the amended section is worded, an employee on extended educational leave, even by agreement with the employer under some specific terms of that leave agreement, long-term sick benefits or other agreed absence, could be granted a claim for vacation pay upon application. We suggest the added wording may cause more problems and more litigation than it solves.

2. Arbitrators in lieu of employment standards officers: The amendments provide for instances where the actions of an arbitrator shall have the same powers as those of an employment standards officer. We are not certain that the differences in the relevant powers under other statutes and procedures of these two types of officers have been adequately dealt with in the amendments. Considerable concern is raised that the clauses which deal with these powers will lead to substantial litigation as the different provisions of the two types of officers are resolved. We would urge the committee to look seriously at the implications of these provisions and make them clearer before the legislation is enacted.

3. Greater right or benefit: We have concerns about the greater right or benefit in the manner in which it was presented in the original provisions. We note that the minister has indicated that this has been put over to the second phase, but have commented on it and will leave those just for the written submission. You may refer to them. The major concern is that we need to make sure that we understand the scope of those and how the evaluation in value will come about.

In conclusion, the chamber supports the two-stage approach to Employment Standards Act reform and in principle supports Bill 49 as that first stage. We submit that with refinement through this hearings process many of the concerns that have been raised about reforms can be addressed and we have attempted to provide some assistance in that regard. In light of the rapidly changing forms and needs of our current places of work, it is important to employees and employers alike that the legislative environment be adjusted to provide as much flexibility and responsiveness as possible.

We thank the committee for the opportunity to appear and for your consideration of our submission.

The Chair: Thank you very much. We have six minutes, which means we have two minutes per caucus. This round will start with the third party.

Mr Christopherson: Lee, Sharon, welcome. It's good to see you both again. I've looked through a couple of times and listened carefully and I didn't see a reference — if there is one, maybe you can point it out to me, but I didn't see where you addressed the issue of whether you believe workers are losing any minimum standards or rights that they now have in the existing Employment Standards Act. Can you comment on that or refer me to the part of your brief that does?

Mr Kirkby: We didn't make direct comment on it. I guess, in reviewing the proposals, we do not see substantive reduction in existing rights. The minimum standards that are provided in terms of basic entitlements are provided in the bill and we did not see major issues of reduction.

1000

Ms Sharon White: There does appear to be some scope for balancing, but the basic minimum seems to —

Mr Christopherson: I'd like to pursue that a little because I see it somewhat differently. Right now there's no cap on the amount of money a worker can claim through the Ministry of Labour for money that's owed. This is money they've worked for, that they're entitled to,

it's owed to them, and there's now a limit on how much they can claim through the Ministry of Labour.

There's also going to be, or at least there's a provision for, a regulation that cabinet can enact that would provide for a minimum threshold that you must cross before you can make a claim. That's new; right now that doesn't exist, and the time frame that you can claim for is being reduced from two years to six months. I would submit to you that's a loss of a right that a worker now has. Can I have your comments on that?

Ms White: Years ago, when the employment standards legislation was codified into the current employment standards code, the types of claims that were followed through the employment standards process tended to be of a fairly small monetary value. I know in recent years, given section 3 of the current Employment Standards Act, officers have an ability to enforce the larger employment standards contract, which tends to get, can get into much larger claims on an individual basis. That sort of enforcement of a private contract of employment through the employment standards legislation was probably never the intention in the legislation when it was first envisioned.

When I read the proposed Bill 49 amendments now they appear to require an individual to go to the courts with claims in excess of \$10,000, but all statutory entitlements — the severance pay and termination pay, that sort of thing — are still enforceable through the employment standards branch of the Ministry of Labour. Sometimes those claims can add up to quite a bit more than \$10,000.

It strikes me that the proposed amendments are a nice balance between the original aims of the legislation and the need not to be using bureaucracy to enforce contractual provisions that were never really intended, originally, to be enforced through this mechanism, anyways.

Mr Christopherson: I would argue that when we lifted the cap, because there used to be a cap of \$4,000 and we made it unlimited, clearly we were wanting to ensure that all those situations were captured by the legislation.

You talk about a balance. We certainly see where employers are gaining a lot, because there hasn't been an employers' group yet that hasn't bumped into Bill 49 and fallen in love with it. There also hasn't been a workers' group, either a community group or a labour group, that hasn't come in and pointed out time after time, and we've already seen it this morning, that workers are losing minimum rights.

I fail to understand where the balance is and I would submit to you that clearly there's a tilt here and that workers are indeed losing rights and benefits they now have.

Ms White: I'd just suggest, in response to that, it's not so much a matter of losing rights as a change in the enforcement process, but we may differ on that.

Mr Christopherson: Oh, believe me, we do.

Mr John O'Toole (Durham East): Thank you very much for your presentation. I just want, in the opening comment, to commend you for the excellent overview of the changed context of employment and work. I think it's very envisioned and certainly looks at what is the reality out there.

The organizations you represent are indeed the future types of organizations. The large Stelco types, General Motors, Ford, Chrysler, are downsizing, as the government is. But certain things that have to be done are services that have to be provided are the new era. Many of those will be unrepresented in the traditional union representation mode. That's also a change for unions where they need to look at what types of services and advocacy actions they take.

I like your last line that says they're finding their hour of work and time frames and traditional models are changing — the seasonal work and the changing demand in the market and the economy. People still need security. I'm making my point here kind of obliquely but, "The decision to hire an employee has become one which is managed risk" — at that point employees and employer both have responsibilities. Wouldn't you agree?

Mr Kirkby: Certainly.

Mr O'Toole: I think, just drawing on a previous presentation earlier this morning, that productivity increases with harmony in the workplace, so why would a prudent employer create disharmony in the workplace or try to create some kind of agitation in his small hands-on entrepreneurial business of 25 or 50 employees. Don't you see that price and quality and harmony in the workplace are really how to get productivity in?

Mr Kirkby: Certainly. It's a major part of what many businesses are doing, both in their training plans and in working, the whole concept of team building etc. Legislation doesn't build teams.

Mr O'Toole: The current system with its bureaucracy and vertical structures — large organizations don't function well, that's proven; that's why they're crumbling. Whether they're union or non-union isn't really the issue. It's that the current structures aren't versatile enough to respond to changing markets. Those versatile structures be they unions, the Brotherhood or the corporation itself have to respond. Would you not agree?

Mr Kirkby: Certainly.

Mr O'Toole: This whole amendment, don't you see that it's absolutely critical that they examine not just these minor amendments but the broader context of the employment standards, given the traditions of work themselves are changing?

Mr Kirkby: That's why we have agreed and support the concept of the two-stage process, because we think that looking at the relationship of employment to what's going on in the economy becomes a critical part of being successful.

Mr O'Toole: That's the reality. That's a really fine statement. Your opening comments are right on; they're very germane, and you're right. This is the kind of input the minister is looking for: What is going to happen in the year 2000 and beyond. We're not looking at the status quo as serving anyone, so it's a tough one. Did you realize that technically less than 25% of actual orders are collected? The system is in gridlock.

Mr Kirkby: We were aware of that and it's one of the reasons why we thought it would be almost across-the-board acceptance; the concept of using some form of commercial collection process to get the moneys people are due seemed to be almost a given as being a better solution than what we have today.

Mr Duncan: Lee, just one question: Would it be your view that the vast majority of your members are good employers and follow the laws of the province both in the labour market and in terms of their taxes and everything?

Mr Kirkby: I would suggest that the vast number of employers across the province are probably typified by the description you've given. One of the difficulties is that we tend to write legislation for the 3% or 4% or 5% who create problems and everybody else then gets wrapped up in them. There are times when people, inadvertently or by not understanding the exact letter of the rules and regulations, may violate them even if they didn't intend to.

Mr Duncan: So what's the big deal? Most employers aren't affected by this statute in any event. The official opposition, by the way, agrees with the government's initiatives to try and streamline, do a better job on collection and make the act work better. We applaud them for being the first government to take a step in that direction, but why would we want to reduce minimum standards? It makes no sense because standards, when they're enforced, only apply to the bad actors anyway, and in my experience the vast majority of employers in this province are good employers. So why in streamlining the act, which I don't think any thinking person would disagree with, would we want to reduce minimum standards?

Mr Kirkby: I'm not sure there's an answer to your question. Our read of it is that minimum standards aren't being reduced. What we're talking about is how we enforce those standards. We can talk about the method of enforcement and whether there are more efficient enforcement methods — we happen to think there may be — that doesn't mean you've changed the standard that people are being asked to meet.

The Chair: Thank you both. Mr Kirkby, in your opening comments you mentioned celebrating 150 years of success. You must be doing something right, because one of my colleagues discovered that the Sheraton was completely sold out last night, so something was happening in downtown Hamilton here.

Mr Christopherson: There's always something happening in downtown Hamilton, Steve.

The Chair: Congratulations on having such a thriving economy, and thank you both for coming in here today.

While the next group, the Hamilton-Wentworth Coalition for Social Justice, comes and settles at the desk, I wonder if the subcommittee members could come up and we'll just discuss this for two minutes. Nobody leave their chairs. We are not taking a formal recess.

Mr Baird on a point of order?

Mr John R. Baird (Nepean): I just have a quick motion to make, if I could, that in Belleville on September 13 we change our time from 9 to 5 to 10:30 to 6:30. We had all-party agreement on it.

The Chair: To accommodate the transportation.

Mr Baird: Because there's a bus leaving from Toronto and that will just make it easier.

The Chair: Seeing no further comment, I'll put the question. All those in favour of the changes proposed? Contrary? The motion carries.

With that bit of housekeeping, back to the task at hand.

1010

HAMILTON-WENTWORTH COALITION FOR SOCIAL JUSTICE

The Chair: Good morning all. We have 15 minutes for you to use as you see fit between presentation and question and answer. I wonder if you'd be kind enough to introduce yourselves for the Hansard reporter.

Ms Andrea Horwath: My name is Andrea Horwath. I co-chair the Hamilton-Wentworth Coalition for Social Justice. With me are two other members of the coalition: Jim Mulvale, who is a PhD student in social welfare policy at McMaster University; and Dr Peter Archibald, who has many areas of specialty at McMaster. Two that are relevant to our presentation are that he specializes in industrial sociology and in labour relations.

We want to begin by thanking the committee for giving us an opportunity to make this presentation. I believe Jim will begin with a bit of an introduction and our general concerns, I'll move into more of the substantive kind of issues, and Peter will conclude.

Mr Jim Mulvale: As Andrea mentioned, I'll just give a bit of an introduction and some general observations. Our comments on Bill 49 primarily address the effects this legislation will have on non-unionized workers. Over half of Ontario workers are not represented by labour unions, and therefore their terms and conditions of work are essentially defined by the Employment Standards Act.

In terms of some of our general concerns and observations, this legislation has been introduced by the minister and it was touted as making parties more "self-reliant in resolving disputes." One of our primary concerns is that it is not a level playing field in labour relations to begin with, that there is an imbalance of power, skills, education and access to information and resources, with employers having the advantages in all those regards.

An observation to make along that line perhaps, or a bit of an irony, is that even as we look around this table at this legislative committee that's hearing about proposed changes to the legislation, I think the committee as such is overwhelmingly male and also white and high-income, as members of provincial Parliament. Of course, this legislation is meant to protect all workers, but it has a special importance for women workers, for workers from visible minorities and workers at the low end of the income scale.

We feel this legislation will reduce access to justice for these vulnerable workers, particularly workers in sectors where abuses are currently rampant, in such areas as garment and textile, food preparation and service, cleaning services, domestic work and homemakers. Of course, as has been mentioned in previous briefs, we've seen an increasing splitting in two of the labour market between a small number of people who are continuing to have high incomes and the declining middle class, and the increasing number of people who are falling into the secondary labour market at low wages, few benefits and without the benefit of representation of labour unions. These are the people who will be most adversely affected, this growing sector of the labour force.

Another concern we have is that this legislation will have a negative impact on people in small workplaces. In

Hamilton in 1993-94, over half of the employment standards claims filed were against employers with fewer than 10 workers. We feel this legislation will make access to routes to justice even more difficult for workers in small work settings and small firms. So it is the most vulnerable workers who are going to be most adversely affected.

We feel also that this proposed legislation puts us on the downward spiral. There's this race to the bottom in terms of working conditions, wages and access to basic rights in the workplace. To reiterate the point made by other presenters, including the labour council, we don't want Ontario to be part of the race to the bottom. We don't want to follow the route of the so-called right-to-work states in the US and certainly not the kind of gross exploitation that occurs for workers in developing countries and so-called free trade zones.

With that, I'll turn it over to Andrea to talk about some more specific issues.

1020

Ms Horwath: We wanted to start with a positive note — I guess it's too late for that — to mention that we do agree with the amendments that clear up issues of entitlement to vacation time as well as the clarification of accrual of service time during parental and pregnancy leaves. Unfortunately, that's where we start to differ, however, on the remaining amendments.

We were concerned particularly about enforcement, because, as you might guess, the social justice coalition is concerned about social and economic justice. We see the ability for workers to obtain justice in the workplace being eroded by this legislation, particularly the time frame for workers to be bringing a complaint being reduced from two years to six months after an alleged violation takes place. What that does basically is it reduces a worker's access to justice. Although we understand why statutory limitations exist, we believe they should provide the greatest opportunity for Ontarians to access justice. We would submit that a two-year period is neither excessive nor modest. It coincides well with the employer's obligation to preserve records and accords the worker a fair window of opportunity to obtain justice.

Similarly, we are concerned that the bill reduces the period for which the worker can recover money from two years to six months. Basically, we think the bill tells employers that they will be able to steal from workers for extended periods of time, knowing that even if the workers were to file a claim, employers would only be required to pay six months' worth of wages owing. This is a calculable risk which we think unscrupulous employers would no doubt feel great comfort in taking. Workers, on the other hand, will be forced to decide whether or not to take employers through the civil courts or through the employment standards system to get some kind of justice.

We're concerned that the discretion of the director of the employment standards branch to obtain up to one year in cases where there are recurring violations does little to deter the employer and again provides some workers greater justice to access earnings. This is not a scenario that provides equal access to justice for workers.

In stark contrast to the tightening up of time period for workers whose rights are being violated, the Ministry of Labour, under this bill, would be given an additional two years to initiate prosecutions against employers who don't pay. This is on top of the initial period where the ministry is going through the initial recovery procedure. This additional two years will in no way streamline expedite enforcement, a stated goal of the amendments.

The next issue is maximum and minimum claims. Again, capping any claims to moneys that are owed to workers by an unscrupulous and unlawful employer is unconscionable. If an employer is intent on ignoring the laws of Ontario, that employer should be responsible for every dime that was stolen from the exploited worker. This section of the bill puts a cap on access to justice for workers.

A similar case will occur if through regulations the minister sets minimum claim amounts. Employers will have basically an incentive, in our opinion, to "nickel and dime" workers out of millions of dollars.

Procedures for violations: We're discussing a little bit in this section the issue of whether or not to file a claim or whether to proceed in the civil court system to seek redress. Of course, the decision that the worker makes initially is a binding decision, but they're only given two weeks to find a lawyer and obtain legal advice. We find that two weeks is a rather meagre time period for making a binding decision that's going to affect their ability to access justice. We think it's prejudicial against workers who have claims for wages owing for longer than six months or greater than \$10,000, as they will undoubtedly have to wait longer to get their settlement through the courts and will be forced to incur considerable expenses to obtain legal representation. The only other option, of course, is to forgo any amount which falls outside of these parameters, again denying them full recovery of moneys owed and again not accessing full justice.

Privatization of collections: We don't agree with the government that the contracting out of collections to private collection agencies will improve the current dismal record of collection of wages owed to employees by employers. In fact, in our conclusions we'll provide some suggestions on how to address this. What we fear is that the major effect of this change will be that workers will be pressured by collection agencies to settle for less than the value of their claim, again leading to denial of justice for the worker. The government itself recognizes that this is likely to take place, which is precisely why the legislation allows for the nullifying of settlements that are the result of coercion or fraud. The remedies suggested are all but non-existent, however, as there is no requirement for review of settlements of at least 75%. The bill in effect entrenches the recovery rate for employees at a basic level of 75% of moneys owed. Again, workers are denied full restitution, denied justice.

Dr Peter Archibald: In conclusion, we would like to restate our concern that the amendments to the ESA contained in Bill 49 will encourage employers to violate the law while curtailing workers' access to and realization of justice. We believe that workers will be forced to choose between their jobs and their rights and that their basic rights will erode.

I'd like to deviate from the script here to give an example from Hamilton, a home-spun one. For years, Stelco has forced workers in Hilton Works to work excessive overtime, even illegal amounts of overtime. The United Steelworkers has twice tried to get the Ontario government to enforce those standards of overtime and twice has failed to get them enforced.

By the way, I find it kind of distracting that I'm competing with the chairman while I'm trying to speak here.

The Chair: Forgive me. The chairman doesn't vote, so the chairman has other duties he has to take care of. But thank you for the lecture.

Dr Archibald: Well, he should do them elsewhere. But at any rate, when students in my classes at Mac do this, I kick them out. Unfortunately, I guess I don't have the prerogative here, but —

Interjection: Why not?

Dr Archibald: Why not? Good question.

What happened in Local 1005 was that many workers were encouraged to work excessive overtime. They made incredible amounts of money, sometimes \$60,000 or \$70,000 a year, while a huge proportion of 1005 were unemployed; they were laid off and couldn't get work. It was in the interests of the employer to keep this situation, because of course they didn't have to hire on more of those laid-off workers and pay them benefits. They could simply work these workers 70, 80, sometimes 90 hours a week overtime. Again, Local 1005 was not able to stop this.

Now, if Local 1005 can't have the act enforced, what's going to happen with a weakened act? What are non-unionized workers going to be able to do if unionized workers can't enforce that? By the way, the ramifications in terms of weakening the union were incredible. Stewards who were opposed to overtime were voted out of office and Local 1005 is a lot weaker as a union in part because those original standards weren't enforced.

We would like to see the current act maintained and strengthened. We would like to see it enforced. This government instead has cut back on inspections, which is going to weaken that. We've heard a lot of talk here about making the system more efficient, saving money. I would question whether this government is serious about saving money. There was a study summarized in the *Globe and Mail* about six weeks ago by an independent research organization which indicated that government bill collectors, including getting money from employers, were three times as effective and three times as efficient as private bill collectors. This study was published around the same time this government announced that it was moving to private collections. Is it serious?

I live in Dundas. A halfway house for young offenders was closed down there, and two thirds of those were sent back to jail at six times the cost to taxpayers that they were paying in that halfway house. Is this government serious about saving money, or does this government want to reward its friends in business? I ask the audience, you make your own decision.

The Chair: Thank you. Well, that only leaves us 45 seconds, so if anyone has any closing statement or a very, very quick question — 15 seconds each.

Mrs Fisher: Very short. I would concur with you, being the only woman on this panel. There's only one solution: Elect more of us and we'll have the representation we need.

Mr Hoy: We don't have much time at all here, but I do want to make the remark that you talked about the balance that's on the committee, who the members are etc. I have family members who have worked and are working for minimum wage. I am a farmer, previous to coming to Queen's Park, and we made less than minimum wage in certain years. So we try very hard to understand what the people are discussing when they come forward and I appreciate your input today.

1030

Mr Christopherson: I would just like to thank Andrea, Jim and Peter for their continuing leadership on issues of social justice, not just for what they're doing here today. For the benefit of committee members, this coalition has worked hard and is consistently there for the most vulnerable people in our community of Hamilton-Wentworth and they deserve an awful lot of credit for the leadership they show on behalf of those people. So thank you very much.

The Chair: Thank you for coming to make a presentation here before us today.

BURLINGTON CHAMBER OF COMMERCE

The Chair: That leads us to our next group, the Burlington Chamber of Commerce. Good morning. Again, we have 15 minutes for you to use as you see fit, and if you'd be kind enough to introduce yourself for the Hansard reporter.

Mr Stan Lang: I'm Stan Lang. I'm the current president of the Burlington Chamber of Commerce. To my right is Mr Scott McCammon, our executive director.

I appreciate this opportunity to speak to the standing committee regarding the proposed improvements to the Employment Standards Act, or Bill 49. As president of the Burlington Chamber of Commerce, I represent approximately 900 companies that are members of our organization. These companies, representing large and small business in a variety of sectors of the economy, employ over 33,000 people, or 60% of the total labour force in our city.

The Burlington Chamber of Commerce joins with chambers and boards of trade across the province in welcoming the proposed improvements to the Employment Standards Act. We congratulate the provincial government for yet again trying to lessen the bureaucracies of government and the burdens on business.

The need for reform is clear. Ontario has an Employment Standards Act which is antiquated, bureaucratic and not reflective of the workplaces of 1996. This is confirmed by the fact that the current act did not foresee the advent of computers and can be interpreted to only allow access to written records, not ones stored on a computer. It is time for the Employment Standards Act to find the 1990s.

As we understand it, the general intention of the proposed amendments is to increase the efficiency of the Ministry of Labour in administering the Employment

Standards Act, to reduce the role of government by allowing increased self-reliance and flexibility, and to simplify the language found within the act itself. These seem like admirable intentions. In fact, with chambers of commerce having preached the need for governments to get out of the way of free enterprise, it is hard to show anything but support for Bill 49.

The Burlington Chamber of Commerce also applauds the government for its two-stage approach to the reform of the Employment Standards Act. Since the issue of standards in the workplace can be a tremendously sensitive one, it is appropriate to deal with reforms in smaller, easily understood parcels. We understand that the provisions for greater rights or benefits will be moved to phase 2 of Employment Standards Act reform. We fully support this move.

Of course, change creates uncertainty, confusion and differing opinions. There may be people who shun Bill 49, viewing it as an attempt by the government to reduce or eliminate standards in the workplace. These concerns, though, would not be justifiable. In fact, enhancements such as section 12, the ability to accrue rights during pregnancy or parental leave, are simply formal acknowledgements of current rights and practices.

The Burlington Chamber of Commerce strongly supports the sections of the bill that eliminate duplication. It has been an unnecessary burden to have wrongful dismissal action disputes dealt with by the courts as well as by the employment standards branch. Employers spend time and money having to defend the same dispute in different venues. Of course, this burden is also felt by the public, whose taxes must support the duplicated efforts.

It has also been difficult for employers to present a fair and accurate defence when many disputes are not filed for years. Older disputes usually lead to longer, more difficult and therefore more costly ministry investigations. We strongly support the provision of Bill 49 which limits the entitlement to recover money under the act to six months rather than the current two years. This places the responsibility for timely filing where it belongs — with the employee.

The Burlington Chamber of Commerce is also very supportive of the proposed change to increase the time limit to appeal employment standards officer orders from 15 days to 45 days. The increased appeal period provides a more reasonable time in which to (1) allow the parties to negotiate a settlement in lieu of an appeal; (2) more fully consider the merits of filing an appeal; and (3) make the necessary payment of the amount of the order and administration cost to the director in order to apply for the appeal. In many cases, the current 15-day period in which to make the payment causes a hardship for employers.

There are some provisions of Bill 49 that we feel need clarification. Our concerns are mainly focused on the difference in authorities granted employment standards officers versus arbitrators.

Employment standards officers have the power to investigate complaints, require production of documents for inspection, and make inquiries relevant to the investigation. Is it intended to give arbitrators these same powers? We do not feel this is necessary. Since collective

agreements have procedures for grievance resolution and arbitration, it seems redundant to then also have an investigation. The grievance procedure replaces the ministry investigation.

Under the act, the orders of an employment standards officer can be appealed. It is unclear whether this also applies to the orders of an arbitrator. If an arbitrator has the authority to make the same orders as an employment standards officer, then it seems only reasonable to allow a parallel system for appeals.

It is also unclear from the proposed amendment whether an arbitrator can award damages beyond the six-month recovery limits. We believe that all employees should be treated equally, and the remedial action of arbitrators should also be restricted.

There is also clarification needed in the area of timeliness. Collective agreements have negotiated time lines for the filing and processing of grievances. These time lines can often be different from those in the act. Which is to prevail? We believe, in order to give the greatest consistency and to avoid problems with grievances that allege violations of both the act and the collective agreement, that the time lines of the collective agreement should prevail.

The bottom line, as we see it, is that Bill 49 embraces the current level of employment standards while ensuring the process and legislation are clear, simple and effective for all parties concerned. The bill also acknowledges current workplace realities, such as pregnancy and parental leave and, of course, computers.

The Employment Standards Act reforms create a balance of change for both employers and employees. We are pleased to be able to offer our chamber's support. Thank you.

The Chair: Thank you very much. That leaves us with about nine minutes, so three minutes per caucus, and this time we will be starting with the Liberals.

Mr Duncan: Thank you for your presentation. I want to come back to this notion that minimum standards don't need to be reduced to improve the efficiency of the statute and the efficiency of the way the statute is enforced. I don't think the official opposition would disagree that we need to look at non-traditional ways, for instance, possibly even the privatization of debt collection.

But where I'm having some difficulty with the presentations I've heard from the business community is, given the very small number of employers who have orders issued against them, why is it necessary to reduce those minimums? If the agenda isn't really rather one of reducing overall a macroconcept of wages, what's the concern? Frankly, as someone who was an employer and someone who dealt with the Ministry of Labour, I would submit that the Employment Standards Act, on a daily basis, was probably the least intrusive of statutes. It only applied where you had a rogue employer.

Mr Lang: I think some of that is obviously a matter of interpretation. We don't see a lowering of the minimum standards. We see flexibility being given under the act to deal with different issues as long as the present minimum standards are met. I'm certainly not going to argue with you. It's just that my interpretation is that the minimum standards aren't being eroded.

Mr Duncan: But the present minimum standards, in most cases, are being changed. There's a couple that we support, as you have as well. But, for instance, the maximum of \$10,000 on six months is about 400 bucks. We are really reducing, in my view, the standard.

Now the minister has withdrawn section 3 of the bill, which dealt with this notion of negotiating collective agreements that may trade off some sort of comprehensive set of standards in exchange for reduction of one standard or another. But again, don't you think that we could achieve the kinds of efficiencies that you have talked and I think others have talked about without lessening standards for employees and workers who are in vulnerable situations?

Mr Lang: A couple of issues: Number one, a number of employees deal in different legislations, not only in Ontario but in other provincial areas. Some of those have a six-month provision so it's, for lack of a better word, trying to balance some of the provisions that one employer has to deal with across different jurisdictions.

While certainly there's been a lessening of the opportunity within the act to deal with the \$10,000 issue, that has not taken away from those employees the right to go to litigation. In the past, they had both opportunities. That opportunity is still there. You're right, it's taking some of it from the act, but it's certainly not removing the opportunity for any employee or any employer who believes they've gone outside the law to seek restitution through the courts.

1040

Mr Christopherson: Thank you for your presentation. On page 2, the fourth paragraph, you state: "We strongly support the provision of Bill 49 which limits the entitlement to recover money under the act to six months rather than the current two years. This places the responsibility for timely filing where it belongs — with the employee."

We've heard evidence, yesterday in particular, in Toronto, that there are situations where workers are faced with an employer that is in the bad boss category, one of the unscrupulous types that unfortunately cause us to need legislation like this in society, and I know you wouldn't support those kinds of activities in any workplace any more than I would. However, they do exist, and many of these people are the most vulnerable in our society. A lot of them are new Canadians, visible minorities, and they don't have any real options in terms of where they can go. Sometimes it takes them a long time to find another job so they can live a place that is, quite frankly, horrible, all but a sweatshop. In other cases, they just can't afford to quit that job because they need the money, as bad as it is, and the evidence is there that the only time they file for what they're owed is after they've already left, if they've quit or been fired.

If that's the reality, then it does fly in the face somewhat of the submission that you're making in that statement, and I wonder how you would reconcile those two when we talk about the reality that workers are facing as opposed to just the intellectual approach to it.

Mr Lang: I think there's a fine line there. I certainly don't disagree with you. With unscrupulous employers or unscrupulous employees, in either case, where there's an abuse being made to the employer or by the employer, I

agree 100% those have to be dealt with. They have to be dealt with and eliminated. Whether this piece of legislation will assist that — we're again I believe dealing with the minority. However, certainly there has to be a vehicle for those people to get dealt with.

Six months, two years, I think is, again, a matter of interpretation. In your case, isolated or otherwise, it's going to be a small percentage, and some people may fall through the cracks. At the same time, I believe the two-year time frame we were dealing with before in costs also led to abuses on the other side where records, due to no fault of anyone, were rather incomplete, caused a lot of taxpayers expense, caused a lot of heartache for both the person bringing forward the claim and the employer involved.

Mr Christopherson: But if at the end of the day that worker is entitled to that, my problem with it is —

The Chair: Mr Christopherson, you've gone over the time already. Mr Tascona.

Mr Tascona: Thank you for your presentation. The basis of Bill 49 is to deal with administrative and procedural changes. In effect, there are no changes in the minimal standards; in fact, there are improvements for vacation and pregnancy leave. But one area of administration that I just want your comment on in terms of efficiencies is, would you agree with electronic filing for orders to pay and also the appeals by employers?

Mr Lang: I don't see any reason why we shouldn't follow through with the progress, to use that word in quotations, I'm afraid, but the electronic filing, eliminating of paper, that's throughout industry. I would be surprised if any company is not into the computer age. The filing of electronic is no different from paper. It just saves time, in many cases; saves costs. Electronic filing just makes good sense to me.

Mr Tascona: The other part of the act we're dealing with, and I think one of the major focuses, is that collection is a problem; 44% of employees received the money owed and in fact what's actually collected is 25% of the dollars. So the focus is on collection, and what we're looking at are measures to improve the collection so that employees get the money they are owed.

One of the problems is insolvency with respect to the employers, and for 67%, that's the reason they don't pay, because of the fact they're insolvent. We've heard some measures with respect to, "What could you do to assist us in collection?" We heard yesterday from certain groups who said, "Why don't you just put on payroll taxes to make everyone pay for these bad employers?"

One other suggestion is maybe the federal government could do something about bankruptcy to ensure that we have measures to protect employees, rather than the provincial government funding the bill for the federal government's not acting. Do you have any comments on that or do you have any ideas on what other measures we could take to improve the collection process to help workers?

Mr Lang: Certainly in our view, again, the six-month time frame, that's the entry level which leads to the collection, but I think timely filing — companies that are unscrupulous and that are abusing their employees need to be dealt with. I would guess, and this is certainly a

personal view, those companies going bankrupt may be going bankrupt because of the abuses they've got to, to the point if they were treating their employees badly, they were probably also treating their suppliers etc, leading to financial problems for them.

But if the filing process is speeded up, I would hope that would lead to quicker resolution of the claims and therefore a quicker collection period to be starting. Under the old scenario, it was many years into the process. Not only did that give the company a longer time to become insolvent, but it allowed them to continue to deal with those employees in a bad manner, and more and more people would be — again, this is the example with the unscrupulous employer — treated badly. It needs to be dealt with quicker. I believe, in my own experience from a collection point of view, the sooner you act, 99 out of 100 times, the more you will get and you will be able to deal with the issues. The longer you wait in any collection procedure, the less money you recover. I don't think that any collection agency or office or whatever will dispute that. You have to deal quickly, you have to deal decisively, and I think shortening up the time frame will lead to better results in the end. Whether private sector is going to be better —

The Chair: We've run over our time. Thank you, Mr Tascona. Thank you both, gentlemen, for coming and making your presentation before us here today. We appreciate it.

ONTARIO NETWORK OF INJURED WORKERS' GROUPS

The Chair: That leads us to our next group, the Ontario Network of Injured Workers' Groups. Good morning. Again, at the risk of repeating myself —

Mr Karl Crevar: Good morning. My name is Karl Crevar.

The Chair: Yes, Mr Crevar, and we have 15 minutes for you to use as you see fit here this morning.

Mr Crevar: I will most certainly try and leave some time. I'm the president of the Ontario Network of Injured Workers, which represents organizations in 34 communities across the province of Ontario. I do not have a brief with me. I was up until 3 o'clock in the morning trying to figure out how to make a presentation to this committee to outline our concerns at the proposed changes.

First of all, let me just say I'm very disturbed, and all the citizens in this province, in a democratic country, should be very concerned, when we're sitting here faced with a bill that's being introduced that had no consultation with the people who would be directly affected with it prior to its inception and sitting here and trying to wrap up in 15 minutes. That, to me, is wrong. The consultation should have taken place with workers in Ontario, because this bill is strictly an attack on workers' rights in this province, and as we've seen in the past, it's just a continuation of previous actions by the government of the day.

The Premier of the province, Mr Harris, has made it very clear, and I'm sure you heard news reports of Mr Harris overseas, stating that Ontario is open for business. It's open for business at any cost, the way I see it when we take a look at this bill.

Bill 49 again demonstrates the Conservative government's agenda, which is in the interests of profits for corporate Ontario before the workers who gave their lives, their sweat and blood to make Ontario a better place to live. Bill 49, this bill, will do exactly the reverse. It will take us back 30 to 40 years to where we were many, many years ago.

As we have previously seen, the cuts in health care, education, social assistance and the future proposed cuts changes in workers' compensation, health and safety and cuts that will be paid for by Ontario citizens through tax increases, user fees etc, and this is at the expense of the most vulnerable people which is our future generation our children, injured workers, workers and disabled and elderly, and Mr Christopherson has mentioned the minority groups that will be affected, the minority workers who will be affected and their rights.

The purpose and intent of the Employment Standard Act was to protect workers by improving workplace standards, not by diminishing them.

1050

Bill 49 limits and will deny access to fairness and justice. Many workers will not be able to afford the high costs of litigation and will be forced to settle for far less than they would otherwise be entitled to under the current act. They will be forced further into poverty. They will be forced to apply for UIC, social assistance or other income replacements. They'll have to turn to food banks to shelters if they lose their homes or families, which in many cases we have seen happen. This is reality. This has happened in other areas. The costs will be borne by the taxpayers of Ontario.

I know we talk a little bit about some of the provisions in the bill when we talk about putting the responsibility on organized labour to negotiate contracts. Well, ladies and gentlemen, the reality is that in employment relations in this province particularly, there's a wall that's built up between both parties. When we see items to be putting on the negotiating table, is the employer going to deny the right to negotiate? That's ludicrous, to put a statute or the bargaining table. What we will see is more problems and they will be more costly than anything else.

I want to say that people elect governments to protect, to protect all of us, not just a few, because we all have a stake in our future here. We all have to protect the rights of all citizens, whether they be employers, whether they be workers, whether they be the elderly, the disabled, the injured. But we do not see this in this bill.

This bill will not protect workers; it will only give justification to further exploit them. Some comments were already made. Workers will be harassed in the workplace. They'll be forced to quit. This attack on workers and citizens in Ontario cannot and must not be tolerated.

I want to just say in closing, as I indicated when I started, I did not prepare a brief. I tried to put together some notes. I don't want to be angry, but I am. Premier Mike Harris and his government, through their neglect of the most vulnerable in our society, stated prior to the election that he would not hurt the most vulnerable; well, he did. Your government has broken that promise. I call on the Premier to resign. That's the most decent thing that he can do: resign, as he stated he would.

The questions I have on enforcement have been talked about before, the enforcement provisions. We know — we did some research into compliance issues — that the insolvent corporations are not being followed up on to collect the moneys that are owing. What will Bill 49 change? It will not change a damn thing. You will continue to lose money. The cost will be put on the workers of Ontario and the citizens of this province.

The shortening of the appeal time: What will happen? Questions have to be asked. Many workers will abandon; they'll just simply say, "I don't want to go through this." Many workers will not even know. I ask the question of the government, how will they know what their rights are, when we all know, around this table, that the majority of workers in this province are unorganized? How will they know what their rights are? They most certainly will not. That is a question that has to be answered that Bill 49 does not answer.

I think, Mr Chair, I will leave that. Again, I want to thank you for giving me the opportunity to address and express my views.

The Chair: Thank you very much. That leaves us two minutes per caucus. This round will start with the third party, Mr Christopherson.

Mr Christopherson: Thank you, Karl, for another excellent presentation. I think it's important to underscore the note that you struck when you talked about the fact that this is not just about unions, this is not just about those who already have; this is about an ongoing attack on the most vulnerable, on the disabled and, in your instance, in your area of expertise and who you represent, injured workers. I wonder, in the context of this being one more piece, if for the record, for Hansard, you could paint the picture you see that Bill 49 forms a part of in terms of the attack on injured workers and disabled citizens in the province of Ontario, which, as you have pointed out, is a direct violation of their promise.

Mr Crevar: We've had discussions with the government on injured workers' issues, on workers' compensation. We know that there's a high rate of injured workers who have not returned to work. We know that they've been harassed in the workplace and we know that Bill 49 will continue to do that. It's just another step. Injured workers who have returned to work will give an employer the opportunity to say, "We no longer have work for you." They will use whatever means, and that is a reality, ladies and gentlemen. That's not just hearsay. They will just say, "I'm sorry, we have no work for you; therefore you're out of work." What avenues do they have available? We see Bill 49 as just another step towards that.

Mr Christopherson: In your opinion, some of the changes that are proposed by the government in WCB — and we know that some of those changes are going to force people to stay at work longer than they need to, because they don't have the protection of the WCB. Does Bill 49, in your opinion, further erode the rights that workers have and feed into that whole idea that workers who are injured will actually have to stay on the job for fear that they don't have the protection in WCB, and now they may not have the further protection

in the workers' bill of rights, which is the Employment Standards Act?

Mr Crevar: You're absolutely correct. We foresee that. We saw it before and we can see that as a continuation to continue on.

Mr Baird: Thank you very much for your presentation; we appreciate it. You mentioned in your remarks that you were concerned about the appeals process being shortened. Is that correct?

Mr Crevar: Yes.

Mr Baird: This bill lengthens it from 15 days to 45 days.

Mr Crevar: What I was referring to is the time to launch an appeal or to launch for a claim. If I misrepresented in terms of words, that is what I meant.

Mr Baird: I think it's the latter. The appeals process is extended —

Mr Crevar: Because it went from two years to six months.

Mr Baird: Yes, you're right on the former part. I just wanted to clarify that.

Mrs Fisher: I have just a short question. I appreciate some of your comments. Obviously, some of them I won't agree with. But I do have a question for you. One of the nice things about these hearings is that we get to hear some of the solutions from the points of other people, of which you are one. Could you please tell us how better to handle the collection on outstanding dues owed to employees who have not been able to collect same under the past government ways in which they did it? When government was involved in it, all governments — this is a non-partisan statement — have been unsuccessful in earning back the rights to the workers' money. Could you please give us an idea how you would do it?

Mr Crevar: You've brought up an interesting point. What I do not see in Bill 49, again, is the enforcement issue, and that's a reality issue — the reality issue of how employees can get what they're due, how they can actually get what they are owed as a result of any action by their employers. What you have to do is strengthen that enforcement.

You have to get away from this idea that simply because — and it's well known; the research is there. Many employers who become insolvent through either bankruptcies or the statements that have been made — "If you force us to pay any money that's owed, we will close," and they use that as blackmail. That's blackmail, and governments have shied away. The Conservative government, I'm afraid — I shouldn't say I'm afraid; what I see — will even step up that procedure and forgive those employers, and this puts the workers at risk. This is what I see in Bill 49.

1100

Mr Hoy: Thank you for your presentation this morning. You would know that the caps are limited to \$10,000, and that on average that's about \$400 a week. People have the recourse to go to the courts for retribution under part of the act. What's your feeling on the ability of workers to use the courts as the avenue for their claim?

Mr Crevar: Again, my comments before were that many workers will abandon because they simply cannot afford civil litigations. The cap that's being proposed, the limit of \$10,000, I believe is unfair. If it takes two years to file a claim for a person earning \$30,000 to \$40,000 a year who is unjustly let go and all they're going to get at the end of that day is \$10,000, I ask anyone around this table whether that's fair. It will be a costly venture and many people will just not go into it.

The Chair: Thank you, Mr Crevar, for coming and making a presentation before us here today.

HAMILTON STEELWORKERS AREA COUNCIL

The Chair: That leads us now to the Hamilton Steelworkers Area Council, Mr Adamczyk. Good morning.

Mr Bryan Adamczyk: Good morning. I'm a staff representative with the United Steelworkers of America working out of the Hamilton office. I'm not going to read the brief verbatim. I will refer to it and maybe read a couple of comments I've written down in the brief. At your leisure, if you get a chance, if you care to read it, we've addressed the issues of contracting out of employment standards, enforcement under a collective agreement, enforcement for non-unionized employees, private collection agencies and decreasing employer liability.

I will say there are a few things that are minor positive changes. One is that we can support the amendment dealing with the entitlement to vacation pay whereby vacation entitlement of two weeks per year accrues whether or not the employment was active. We can also support the amendment that provides for the calculation of service and length of employment to include time while on parental and pregnancy leave, and the issuance of termination pay seven days after the person has been terminated.

Those are probably the only minor changes that we would see as — I think the term that has been used by the government is "housekeeping." The rest of the amendments that are being proposed under Bill 49 are just a gutting of the Employment Standards Act, in our view, really a brutal attack on working men and women.

Let me explain a bit to you who we are. The Steelworkers area council represents approximately 14,000 men and women in the Hamilton area. We represent people who work, for example, at Stelco's Hilton works, Lake Erie works and small units. We're the bargaining agent for the people who work at the occupational health clinics for Ontario workers, which are under attack right now. We're in fear and jeopardy of losing them.

I understand that this process is the first phase of a two-phase process of reform. I looked up the term "reform" in the Funk and Wagnalls dictionary. Normally, reform means a change for the better; normally, it means a moral improvement and a move to improve social conditions. The Bill 49 amendments are not doing that. They're regressive, not progressive. They would like to take us back maybe past the 50-year mark. The last introduction to changes in labour legislation took the labour movement back to the 1930s and this would take us back even further.

I'd just like to comment on two areas of our brief. One is the contracting out of employment standards. Let me start off with that. Our concern is that the bill would eliminate the basic standards with respect to minimum standards covering hours of work, overtime pay, public holidays and vacation pay. The bill erases the standard for people who work in organized workplaces. It's just a matter of time; perhaps in your phase 2 you'll want to have these amendments applied to people who do not have the benefit of being represented by a union.

The contracting out of the employment standards has an impact in two areas. It has an impact on the worker's quality of life, family obligations and health and safety. Let me give you an example, if I can. Let's suppose under the Employment Standards Act you increase the hours of work a worker could be scheduled to work up to 56 hours. I understand some months ago General Motors wanted the government to address that issue and increase the hours of work whereby a person could be scheduled seven days, forced to work that. That has an impact on a person's quality of life as far as dealing with their family, health and safety issues, and other implications are concerned.

Let me give you an example of a health and safety issue: We have a foundry here in Hamilton, Dominion Castings. They have about 700 workers there and it's a tough job to do, a real tough job to do. Foundries, by their nature, are just ugly. This time of the year we get a lot of phone calls down at the hall because the heat is bad and people get real miserable. In wintertime it's cold, brutal. A good group of men, and we've got some women; some women operate the cranes there at the foundries.

They are scheduled to work 48 hours a week. At times people don't mind making some extra money, but normally they are scheduled to work Monday to Saturday. Because of the way families are, we have people who have split up from their spouses. It's not unusual — I had a couple of cases when I serviced that local union where a fellow would phone me up and say:

"I just got disciplined by the company for not showing up Saturday. I was scheduled to work."

"Why didn't you go in?"

"Here's the problem: For the last six months I've been working six days a week. I've got two kids, and in the past I might get them maybe once a month, on the weekends. Normally, I have to get somebody to babysit them. But damn it, I've been working too hard and I want to be with my kids. I decided, when my wife dropped the kids off, I couldn't make any other arrangements. I made a judgement call, to spend time with my kids whom I don't see that often because my wife has custody, or to go in to work."

He made the right call to stay with his family, but from his employer's point of view he was supposed to show up for work. It has an impact on the quality of life for our members. Also, when somebody starts making those kinds of judgement calls, it could put them in jeopardy with their employer.

Health and safety is an issue too. Some jobs you could probably do dancing on your head in some workplaces. Other jobs — you're talking about foundries, people

working in the retail and wholesale sectors, people who work in steel mills and other workplaces — it's tough to get through just an eight-hour day.

The other issue is that if an employer right now was to bring to the bargaining table changes to negotiate less than what the act provides for, I could hit him with bad-faith bargaining, because we have what I understand is termed the "floor." But rather than having employers and unions work in a labour relations climate that is one of cooperation, partnership, with this legislation we're going to be on a collision course. Working people have fought long and hard for the gains. In the past in the steel industry we've had to give up some concessions at the bargaining table, but to negotiate anything less than what is there by law is going to put us on a collision course and we're going to end up in an adversarial situation in many cases. I can't see that. Talk about a message you send out to anybody who's thinking about investing in the province of Ontario. I don't think anybody wants to invest in this province if there's the potential for a lot of labour turmoil.

Enforcement under the act: What you're proposing, I understand, is that if you're in a union you can't go to the employment standards branch and lay a complaint; you're going to have to use the agreement and arbitration procedure. We have a couple of problems with that. First of all, unions are going to be drawn out in long, lengthy litigation. The other problem with that is if a disgruntled member isn't happy with maybe the outcome of our investigation, whether or not he has a complaint, he'll file a complaint with the Ontario Labour Relations Board saying that we misrepresented him.

I can't see the logic in where you're going with this, because if I end up at the labour relations board with a misrepresentation complaint, so does the employer, because the employer will be involved in addressing a concern about a violation of the Employment Standards Act; they would have violated it. If the disgruntled employee, our member, didn't like what he heard, he'd go after us, and also the company would be dragged into it. A lot of money; it's costly for companies to hire their lawyers, to book their plant manager, human resources personnel, their assistants, general foreman — everybody — to go down to the labour board. That's not very cost-effective. The current system is, in our view, expeditious and inexpensive. It provides for an officer to come out and investigate the matter before it goes any further and probably most times it's nipped in the bud.

1110

Non-unionized employees will have two routes to go. One is to pursue the employment standards route and the other one is to go to civil litigation. As the previous speaker addressed that concern, some people just won't have the financial resources to go out and hire a lawyer to represent them to go after their money.

The only other thing that puzzled me a bit has got to do with these hearings but not with the act. I got a call in my office last week from somebody from the Ministry of Labour who wanted to know what the Hamilton Steelworkers were all about and what our, as I think her term was, mandate was and what we do, our guidelines. I found that puzzling because I would think that anybody

in the Ministry of Labour and anybody who would be on this panel would do some research and find out about the labour movement. With the Bill 7 amendments and these amendments you're proposing, I don't think you've done a good job finding out what the labour movement is all about and what working people are all about and their concerns and their issues.

Those are my comments. I'll try to answer any questions you may have.

Mr Tascona: Thank you for your presentation. I just want to deal with one aspect of it, though, the enforcement under a collective agreement. As you're aware, under the act currently, under section 58 for severance pay, unions have the power and have been given the rights to settle severance pay claims with an employer. Bill 49 essentially is extending the union's role to resolve all claims under the Employment Standards Act. What is the problem with giving the unions greater rights to represent their workers with respect to these types of claims when the history is that there are very few claims which involve unions and the employment standards branch?

Mr Adamczyk: Let me put it this way: In some cases we put in language that talks about severance pay in the event the plant closes down and how much severance pay people would get. Normally, it's better than what the law provides for.

Mr Tascona: I know, but you've been given that right already to deal with severance pay claims under a collective agreement. That's a precedent that's already set. We're extending that right for you to get involved and deal with your members' claims. The average claim time is seven months to turn around under the Employment Standards Act, I understand. You have a grievance procedure. You have expedited arbitration under the Labour Relations Act. Arguably, you've got a faster procedure to resolve the claims if the union decides to take that claim and represent its members.

Mr Adamczyk: Normally, when we're talking about severance issues in a lot of cases we're talking about a plant shutdown or a partial cessation of operations. Yes, we do have expedited arbitration; that's true. One of the difficulties with that is that we used to have the use of settlement officers but you're going to be laying off all the settlement officers. They'll be out of a job November 1. That was a good way to try to mediate any type of an issue. Again, we have a system. The Employment Standards Act has been there for some time. In our view it's a system that works, it's inexpensive and it's quick. If it ain't broke, why do you have to go out and fix it?

Mr Duncan: I'd just like to pursue that for a moment. One of the things that strikes me about the debate is the notion that the system works; I don't think it works at all.

Mr Adamczyk: But the —

Mr Duncan: If I can finish by putting a question, I had a chance to read your presentation about the privatization and use of collection agencies, and one of the things that strikes me about the failure of our current system is our inability to collect wages owing. Yet in what I read here you seem to be saying that things are fine the way they are. I would be curious to know what proposals you might be able to offer that would make the

collection of wages owing, increase the percentage, rather than simply defend I think a process which demonstrably isn't working and I think demonstrably was lowered when the collection agents of the Ministry of Labour were let go in previous years. Do you have any suggestions along that line? I don't think the present system works.

Mr Adamczyk: What I think you have to do is go out and enforce it. If somebody owes you money, if the Ministry of Labour is acting on behalf of a claimant — is that what you're asking?

Mr Duncan: No, I'm asking you how would you enforce it. We all agree we have to enforce it. I guess the real question is how. What methods are available? It disturbs me when I hear progressive forces in our society such as the Steelworkers suggesting that the status quo is adequate. I don't think it is and I'd be curious to know what suggestions you would have, because I don't think necessarily the government has the right ideas. I'm really curious as to what kinds of proposals you have.

Mr Adamczyk: Why isn't the money being collected? Because employers just don't want to give it. Right? Why do you stop there? That's what I would ask the government. Why do you stop there?

The Chair: Sorry, Mr Duncan, we're running over time. Mr Christopherson.

Mr Christopherson: Thanks very much, Bryan. It was an excellent presentation as always. I just want to talk a bit about the issue of, as you've called it here, the contracting out of employment standards. You speak in the brief of the fact that your union, the Steelworkers, which is certainly one of the strongest, most-established unions in the country, is not prepared to relinquish rights that were obtained through, in most cases, long, hard fights. I suspect that even you could see with some of your larger locals that you'd have a struggle, depending on the situation the company found itself in, to fend off those attacks on the basic rights.

Mr Adamczyk: That's right.

Mr Christopherson: Recognizing that, what chance do you think smaller locals or isolated local unions would have, faced with an employer who's not merely putting concessions on the table as they relate to improvements that have been negotiated into a collective agreement, but now the fundamental bill of rights that workers have had for decades? What do you think their chances are of holding off against an employer that comes after them that way?

Mr Adamczyk: Slim to none. It would destroy them. It would out-and-out destroy them.

Mr Christopherson: Would you agree that that's the slippery slope taking us back to the point where there are no minimum standards, that if you do that often enough and if you had checkered rights in some places and not have the rights in other spots on the checkerboard, eventually the rights don't mean anything and it's a free-for-all?

Mr Adamczyk: Exactly. I deal with employers some of whom we're trying to drag, kicking and screaming, out of the 19th century. We're heading into the 21st century, and this legislation wants to take us back on that slippery slope. Oh, yes, the intent is to take us back farther

than — as I indicated initially in my opening remarks, past the working conditions and whatever rights people had 50 or 60 years ago.

The Chair: Thank you, Mr Adamczyk. We appreciate your taking the time to come before us today.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA

The Chair: Our next group up is the Labourers' International Union of North America, Local 837. Good morning, folks. Again, 15 minutes for you to divide as you see fit, if you would be kind enough to introduce yourself for the Hansard reporter.

Mr Joe Mancinelli: Thank you, Mr Chairman. I am Joe Mancinelli, regional manager for the Labourers' International Union of North America for central and eastern Canada. To my right is Paula Randazzo, who is an industrial representative for LIUNA Local 837 here in Hamilton which represents approximately 3,000 workers.

The Labourers' International Union is an international trade union affiliated with the AFL/CIO, the CLC and the Ontario Federation of Labour. We represent 770,000 members across North America, 40,000 in Ontario, and about 3,000 in this very fine city, Hamilton. We represent a very wide variety of workers, precast workers, construction workers, workers from many different sectors, and we also represent a very significant portion of our membership that is non-construction which is in the cleaning, maintenance sector. We have caretakers in the public sector from the Hamilton-Wentworth separate school board, industrial workers from factories in the area, plants, airport workers and other sectors.

1120

LIUNA is one of the most innovative trade unions in North America. We have recognized the need to partner with our contractors and work together to find innovative solutions to our industry. I know that our next speakers are the Hamilton Construction Association. Cam Nolan is coming up, a good friend of LIUNA, we get along very well. Even though our opinion on this bill may differ, and you'll hear that today, we get along very well with our contractors.

LIUNA has gotten involved in a number of projects where we've partnered with our contractors. The Garden River Reserve project in Sault Ste Marie, where we've partnered with the native Canadians in that area, Keiwick Construction and ourselves, to work on a \$100-million project which will be financed by the consortium is a display of our innovation. The 407 highway is another display of our innovation. Of course, the Prince Edward Island fixed-link bridge between PEI and New Brunswick and the Hibernia project where we're very active show the kind of innovation that we're involved with.

We have provided unprecedented service to our members and their families and have achieved the harmony and progress I have briefly outlined because of the stability in the workplace. But also stability in the Legislature has given us the opportunity, of course, where for decades a delicate balance was achieved by keeping companies profitable and competitive and of course, our workers protected. We are concerned that Bill 49 will

once again erode that delicate balance that has made Ontario unique.

The Minister of Labour, the Honourable Elizabeth Witmer, has indicated that the changes to the Employment Standards Act embodied in Bill 49 will cut through years of accumulated red tape. In fact the effect of these amendments will be to cut even further the currently inadequate protection found in Ontario's employment standards legislation.

The minister has said that these amendments will encourage the workplace to be more self-reliant in resolving disputes, where in fact we feel that the proposed changes will encourage employers to take advantage of their employees. The minister has said that these amendments will make the act more relevant to the needs of today's workplace, where in fact these amendments ignore the needs of today's workplace.

The minister has also said that these changes are designed to focus the attention of the government on helping the most vulnerable workers. In fact with these amendments the government is preying upon those who are most vulnerable and rewarding those employers in Ontario who operate outside the standards demanded by Ontario workers and demanded by Ontario law.

Many of the presenters here today will be voicing their grave concerns with this proposed legislation. In some instances I will echo those voices. However, and I know the workers in Ontario would agree, such an important message cannot be conveyed too often.

Over half of employment standards claims in Ontario are from workplaces with 10 people or less. Traditionally, labour has found these small workplaces the hardest to organize and service. The changes in Bill 49 will make it even more difficult and far more expensive. The result will be to discourage those same workers from joining the very unions that traditionally have been able to negotiate far better working conditions and job protection and which have protected the rights of those employees currently codified in employment-related legislation.

With global competitiveness as the rationale, our government is reducing the standards that encourage the most productive use of our workforce. This rationale ignores the fact that in Canada, our exports, primarily produced by union labour, who enjoy standards far above those provided for in the Employment Standards Act, continue to be competitive in the global market. Furthermore, this rationalization based on competitiveness and the global economy ignores the reality that those members of our domestic labour force who most need the protection of the Employment Standards Act do not compete in the global market because their services are not and cannot be performed offshore.

Clearly, the government's attack on Ontario workers cannot be justified in the name of the global economy. Clearly, this is a veiled attempt to undermine the bargaining strength of Ontario's workforce and the unions who represent them.

Bill 49 contemplates collective agreements where terms respecting hours of work, overtime pay, public holidays, severance and vacation with pay will be below the minimum standards currently prescribed by the Employment Standards Act. The only proviso is that these rights

as a package will confer a greater benefit than the comparable employment standards as a package. These proposed changes are merely a back-door attempt at eliminating Ontario's minimum employment standards. Minimum standards — and make no mistake, these are the minimum standards to be tolerated in a democratic society — serve a number of purposes, all of which are frustrated by these amendments.

First, the employers and unions will have to agree to the package. With employers attempting to push back currently established minimums in the name of competing in a global economy, unions will have to rely on strikes and work action in order to protect the interests of their members. By placing long-established employment standards on the table, Bill 49 makes the settling of contract issues more difficult, again adding to Ontario's industrial conflict. In fact the resulting labour unrest will be detrimental to Ontario's economy, and not further the government's stated objectives. In the view of this obvious fallout, one is left wondering as to the real motivation of this government in proposing such an erosion of the rights of unionized workers in Ontario.

Second, experience with the current legislative scheme shows that determining whether a contract confers a greater right or benefit is not a precise science. Making such a determination under the proposed scheme will require the comparison of apples to oranges, and the legislation provides no guidance in making this determination. Employees of Ontario do not deserve such uncertainty in their workplace. What the employees of Ontario deserve, and what Bill 49 does not give them, is security in knowing that certain conditions and terms of employment are not subject to dispute. Although I understand it is the intention of the minister to defer this particular provision until later this year, its shortcomings will continue to exist, no matter when it is introduced.

For unionized employees, Bill 49 shifts responsibility for the investigation of employment standards breaches to the unions and to the employees they represent. By doing this, the government is abdicating its responsibility to the workers of Ontario. Many employees and their unions, particularly in those job sectors where employment standards breaches are most prevalent, will not have the resources to take on the added responsibility. This is especially true with the demise of previously available ministry mediation services.

In fact the question remains whether the Labour Relations Act confers sufficient jurisdiction on arbitrators appointed under the act to fashion the remedies needed in an employment standards context. What this means is that employees in Ontario will not be able to enforce their rights. What this means is that the most vulnerable of Ontario's workers will be denied access to justice. Our society demands a remedy for all workers in Ontario. The scheme contemplated in Bill 49 will erode and destroy decades of hard work by both business and labour.

Let me put it into real terms for you. The Labourers' International Union currently is leading a claim to the employment standards branch on behalf of a number of cleaners who, through the actions of a successor employer, were replaced in their jobs with workers earning minimum wage. This successor employer has not

fulfilled its obligation under the Employment Standards Act, and the displaced employees have not been paid termination pay in lieu of notice, nor have they been offered meaningful work.

Under the current system these employees do have a remedy through the employment standards branch. Under the system proposed by Bill 49 the cost to the union of investigating this complaint and taking it through grievance procedures would be prohibitively high. In essence, these employees would be unable to recover the two weeks' wages presently owed to them. This may not seem like a lot of money to some of us in this room who are fortunate enough to earn a decent income, but to unemployed cleaners who earn \$8.50 an hour, this amounts to their food and housing.

The bottom line is that unions will simply not be able to pursue the valid employment standards breaches complained of by their members if they have to use the arbitration process. Again, justice for the most vulnerable and marginalized workers in our society will be denied, while dishonest employers will be rewarded for their illegal, unjust actions and honest employers will be denied the right to a level playing field.

As I mentioned earlier, Bill 49 essentially privatizes the investigation of employment standards complaints for unionized workers. It also goes further in its privatization of the protection of Ontario's workers. By virtue of Bill 49, responsibility for the collection of amounts owing under the act will be surrendered by the ministry to private collection agencies. Simply requiring employers to pay for collection costs would vastly improve the ministry's ability to collect amounts owing under the act, but such a course of action is not being proposed. Instead, the minister proposes to turn over the fate of Ontario workers to an unaccountable group whose sole motivation is profit. Altruism is not known to run rampant in the private sector. It is therefore not hard to see that such a scheme will result in collection agencies acting in a manner which is most profitable even though it may be at odds with the affected employee's best interests.

1130

Today we will all hear a great deal about the shortcomings of Bill 49. I've briefly covered those issues which will affect organized labour in Ontario, including the members of LIUNA, which I represent. I would, however, like to quickly touch on a few remaining issues before closing.

Bill 49 proposes to limit employees' recovery to six months in the name of increased efficiency and fewer evidentiary problems. If this was the government's true objective, why does Bill 49 not include provisions to expedite the ministry's investigation and enforcement of employment standards claims? Bill 49 does not address the current four-year period available to the ministry to investigate and enforce a claim. In addition, why must this alleged increased efficiency be borne on the backs of Ontario's employees? Limiting an employee's recovery shifts the enforcement of Ontario's minimum standards to the individual by pushing employees to use Ontario's civil courts to recover money owed to them because of the employer's employment standards violation.

Some might ask: With all these employees seeking their remedy through the courts, won't the cost to Ontario taxpayers actually be higher than under the current enforcement mechanisms? If that's the case, why would the minister propose a change that would actually increase costs? The answer of course is obvious. An overwhelming majority of employees cannot afford a lawyer and therefore will not pursue their claims. The minister is in fact counting on this and aims to save money at the expense of those who really need it most. The result: For all practical purposes, those employees who cannot afford legal representation will be left without remedy. In Bill 49's Ontario, employers are winners. There can be no excuse for this unjust enrichment and imbalance.

The yet-to-be-prescribed minimum claim will have much the same effect. For those to whom every penny counts, and that's most people in Ontario, if their claim is below the minimum set by the minister, they will be forced to head to Small Claims Court to enforce their rights.

For those whose claim exceeds the maximum, they are forced either to abandon that part of their claim in excess of that maximum or hire a lawyer and initiate costly litigation. Again, for most, making a civil claim is not financially viable. Most will be forced to accept less money than they are owed. Since a small percentage of the claims actually exceed \$10,000, there is no improved efficiency here. All that is accomplished is to deny justice to those who are wronged.

In conclusion, the innumerable complaints currently handled by the ministry confirm that the protection afforded by the current act is weak and its provisions are not effectively enforced. The fact is, this legislation should be bolstered, not eroded. Changes to the Employment Standards Act which address preventing employment standards violations and expedite their investigation and enforcement should be introduced, not the current amendments which simply reward the unscrupulous employers in Ontario who violate these minimum employment standards with impunity.

We have worked hard as an organization, together with our companies and our contractors, to achieve progress and stability in the workplace. I find it disheartening that this type of regressive legislation continues to be introduced.

I thank the committee for the opportunity to express our views on Bill 49, and we look forward to some positive changes to the bill as its progresses.

The Chair: Thank you for your submission. You used the magic words "in conclusion" just before 15 minutes. Actually, we've gone to about 16 and a half, so I'm afraid we won't have time for questions, but thank you very much for taking the time to make a very detailed presentation.

HAMILTON CONSTRUCTION ASSOCIATION

The Chair: That means the next up will be the Hamilton Construction Association. Good morning. Again, we have 15 minutes for you to divide as you see fit.

Mr Cameron Nolan: My name is Cameron Nolan. I'm the executive director of the Hamilton Construction

Association and I'm very pleased to be here. I'm also quite pleased to follow my good friend Joe Mancinelli because it gives me an opportunity to critique everything he said, but I won't do that because we have a good working relationship.

I want to emphasize, however, because I do follow his presentation and do have a somewhat different perspective to present to you, that I don't think the goals and objectives between management and labour are different necessarily; they perhaps are just achieved in different ways. For those companies that operate with good standards and good wages and pay their employees according to the act or in superior performance to the act, they know the importance of having the competitors that are in their industry paying at the same rates, dealing with their employees in the same manner and at the same cost, because that creates a more level competitive playing field. So I don't think we have different objectives. Perhaps it's just a question of some differences of approach.

The Hamilton Construction Association represents some 380 firms that are working in the non-residential construction sector. Our members employ anywhere between 15,000 and 20,000 people over the course of a year in terms of actual persons, but based on the number and volume of construction activity in our area, which presently is about \$200 million, that represents a fairly substantial number of employment years in terms of activity within the non-residential construction sector.

I'd like to start off by saying that the overall assessment from the construction industry is relatively positive to the government initiatives. The essence of that is that these kinds of initiatives where increased flexibility is going to prevail and the ability of employers and employees to set their own tone for how they're going to work and make themselves more competitive in a global economy are certainly of benefit.

I will tell you that we are most appreciative of the overall government emphasis on handling its finances and cleaning up its red tape and various other aspects of the legislation that intend to be changed. We are supportive of the agenda, and I want to tell you that we are despite the fact that the current economy is killing the construction industry and the current initiatives are killing the construction industry in the province of Ontario.

We have seen in the Hamilton area, for example, a decline in non-residential construction activity from a high of \$450 million for the year ending December 1990 to a low of \$210 million roughly for the year ending December 1995. That's significant. That changes the number of employed persons from employed person-years in the order of 10,000 down to roughly half of that. It is significant. So while we are hurt, we certainly are appreciative of the kinds of general directions because I think that has long-term stability and importance for long-term economic health and benefiting the province of Ontario and the people of Ontario.

I'd like to touch on just a few general comments, then some specific comments, and hopefully leave time for questions.

The construction industry has exemptions within the act. It probably doesn't take a brain surgeon to figure out

that inclement weather and the problems of being able to put construction works in place in times of poor weather conditions, whether it's rain or snow or cold, means that in order to take what would hopefully be a year's worth of employment, we have to crunch that down into a smaller period of time in the good weather months. There's a recognition within the Employment Standards Act of this particular fundamental aspect of the construction work, and we appreciate that recognition. We need the recognition, both labour and management, in order to be able to ensure we have a productive period of time in which to complete the work that is required of us and provide an opportunity for our companies and our employees to profit from that through wages and salaries and other forms of profit.

While we appreciate that, we want to remind the committee that as you go into the second-stage review there will be more discussion about these types of flexibility arrangements for construction, and we want to encourage you to enhance them.

The second issue I wanted to address with you is one that relates to a specific segment of the act which is not addressed, to my best knowledge, under Bill 49. It's clause 58(6)(e) of the act, which relates to construction workers who may be working in a shop or a fabrication shop for their employer under the terms of a collective agreement; for example, a sheet metal worker who is a member of the sheet metal union, working for that union as a member of the union employed by a sheet metal contractor, but who works on a day-to-day basis at the location of the office of that sheet metal contractor fabricating the components that will eventually be installed on a construction site. That employee is under the collective agreement, just as the employee who is out at the site installing the fabricated works — fabricated works which could be fabricated onsite, I might add, but are done more efficiently in a plant at the site of the employer, all under the one collective agreement. The employee in the shop, because of the terms of clause 58(6)(e), has greater severance rights under the present act than the employee on the site. They're both paid the same wages. They have the same terms and conditions of their employment contract. They essentially do the same work; it's different parts of the same work.

So that's a problem with the act and we are proposing that it be amended. It's in the brief; you can read the details. If you have questions about it, I'll address those.

The remaining comments relate to some of the concepts within the act. I'd like to support the reduction to six months. I also think it's prudent to place upon the Ministry of Labour and the Employment Standards Act officers a duty of care that recognizes that six months. I didn't say that in the brief, but I think when you heard from Mr Mancinelli, that's only a fair and equitable position to take. If we're going to speed up the process and constrain the time period, we have to place performance standards on our government employees that will meet those standards of performance that we're expecting of the general public and the employers and the employees. I might add that we have to furnish them with the resources to make it happen properly too. So we would certainly encourage that.

1140

With respect to the minimum and maximum claims authority and increased authority of officers, once again Bill 49 doesn't recognize — and we do say in our brief that you must provide proper training; you must take a look at your hiring practices and examine what the best way is to make sure we have employees who become officers and have the capabilities of carrying out those new responsibilities. Adjudicating responsibilities are different than fact-finding responsibilities; with them comes a greater duty of care as well. So it's incumbent upon the minister to put the resources in place to make that happen as well.

With respect to the courts or the ministry, my understanding is that the minister wants to preclude parties from doing both at the same time and "double-dipping." That makes eminent sense. If there are some deficiencies in that in terms of constraining a person's ability to make ends meet or to in fact have the money to hire a lawyer, right now they can follow the Employment Standards Act line of thought. They can do that after this change. I don't see the difference there particularly.

Dispute settlement before investigation that allows the employment standards officer to let the parties come to a resolution before a completed investigation seems prudent. It reinvests in the parties to a dispute the rights that are theirs to begin with, the right to come to a settlement so that we don't have government intrusion where two parties come to an agreement. That seems to make sense to us.

With respect to the privatization of collections, once again, standards can and should be put in place that ensure that private collection agencies do have the employee's best interests at heart and they only make money when those objectives are met. It does have the advantage of separating the investigation and adjudication responsibility from the collection responsibility, and that frees up the employment standards officers to do their job with more focus. We agree with that.

With respect to grievance procedures being used as a means to address Employment Standards Act disputes or disputes between an employer and an employee, there are some issues raised by the Ontario Chamber of Commerce that I think are relevant. You should pay attention to those questions and address them at the end of the day. It's going to be critical that there be some very clear guidelines set. I think the Ontario Chamber of Commerce has identified, for example, the time limits. If the minister and the government put in place the six-month time limit, that may not exist in certain collective agreements. Which prevails, the ESA amendments or the collective agreement amendments and time periods? That's something that the minister will have to pay fairly close attention to.

I agree also with the clarification of the pregnancy and parental leave, but I want to tell you one other thing that I don't think is in the act, and I'm not sure the change that's proposed really addresses this: an employer who has chosen weeks in lieu of, so weeks of service in lieu of 4% or 6% or whatever that is. An employer who is in that situation will pay to an employee who takes parental and pregnancy leave the full weeks in lieu of. That's the Ministry of Labour interpretation brought to bear on that

language. So if I, as an employer, have chose that route, I have to pay two weeks' vacation to my employee despite the fact that they may have only been in my employ for six months, while they took the balance of six months for parental and pregnancy leave. That seems to be an improper balance and definitely should be addressed in terms of changes.

There are several other minor items that are in the brief; you can read them. We do acknowledge the minister's tabling, if you will, of the proposal that employers and employees can set terms and conditions which differ and vary and maybe are less than the Employment Standards Act. When they come up under the second-stage review I think will be an appropriate time to spend more discussion on those points.

With that, at the end of our brief there's a brief synopsis of who the Hamilton Construction Association is. I've appended to it some statistics on building permits to validate my comments earlier. That concludes my formal remarks. I'd be happy to answer any questions.

The Chair: Thank you very much. That leaves us with four and a half minutes for questioning, so one and a half minutes each. I guess because we didn't have any questions last time, we'll commence this round with the official opposition.

Mr Hoy: Thank you for your presentation. We've heard from a number of people, and you cited here, courts or the ministry. There are a number of citizens and workers who can afford to do that, I would suppose, but I've been meeting with people who quite frankly are meeting with more costs in their life rather than reduced costs. I cite tuition increases which are happening and which I'm hearing about quite a bit right now; that school is about to go back and user fees are proliferating through universities. These people are hardworking, they see their costs going up, and the suggestion is that they will not be able to pursue through the courts any claims that they may have. Do you believe that to be true? Should there be some onus on the ministry to assist those people, rather than forcing them to the courts?

Mr Nolan: I have no knowledge of whether that's true or not. I don't know how that circumstance distinguishes from the present circumstance. I have some great difficulty understanding. If they can't afford it now, presumably they're not pursuing through the courts now and presumably they're using the ESA as their methodology for achieving some satisfactory result. If they're doing that now, I don't see how they're not going to be able to do it in the future. There are certain elements of the proposal which constrain parties, clearly, and those have been identified. I think I acknowledged that if we're going to put those constraints, we have to put some more resources in place to make sure that they are properly adhered to.

Mr Christopherson: Cam, thanks very much for an interesting presentation. What I'd like to do, because you opened up by saying you'd listened to Joe Mancinelli's presentation, and I wanted to ask him a question but time didn't allow it, I'd like to run it by you.

Mr Nolan: Oh, I can answer for Joe.

Mr Christopherson: That's what I thought, interchangeable. I don't want to break up this great love-in

you two have, but I found it really interesting because it's the first time that I've seen it put forward, and the fact that it was put forward by a labour organization I thought deserves to be underscored. Joe said in his presentation, "Again, justice for the most vulnerable and marginalized workers in our society will be denied, while dishonest employers will be rewarded for their illegal and unjust actions and honest employers will be denied the right to a level playing field."

Mr Nolan: I've said the same thing.

Mr Christopherson: I thought that was an excellent point. I wonder how you would comment on that.

Mr Nolan: I think Joe is absolutely, 100% on. Those employers, whether they're union or non-union — and that's quite irrelevant; there are many employers in both areas of our economy who operate in the most legitimate way because they understand the long-term value of that. There are some employers who will be able to get away with it.

I think when you deregulate, when you lessen regulation, when you reduce the power of government to intrude in the relationship, you risk that side of the equation being exacerbated, where the most vulnerable can have difficulties. My sense of it is that the minister just has to put the resources in place to make sure that the Employment Standards Act officers are spending their time in that area of the sector rather than the area that's already performing well.

Mr Christopherson: I would interpret the statement that Joe made, that "justice for the most vulnerable and marginalized workers in our society will be denied," to mean that it will be denied as a result of the changes in Bill 49, and that that will lead to the inequity that you agree will be there. So I see a little bit of inconsistency.

Mr Nolan: I think the inequity already exists, because I don't believe that the Ministry of Labour or the Ontario government or any government has the resources today to enforce to the degree that is necessary. So it's a question of reallocation of resources. I think that's where Joe and I may have a somewhat different emphasis in terms of the philosophy that's here. I see the opportunity for reassessing where the resources go; they see it differently, and that's their call.

The Chair: Questioning moves to the government benches. Any members?

Mrs Fisher: If we follow up on what Mr Christopherson was just asking — and I don't disagree with your comment, by the way, because right now it's not working competently and it's not serving all of the workers of Ontario; so we together have to do something to fix that. I believe that's the goal of the changes to the act right now.

In saying so, however, as you've noticed through the course of the morning and ourselves yesterday through the hearing process, there's consistently this issue with regard to the collection of outstanding moneys owed to workers. If we were to reallocate it so that the responsibility of enforcement of the act other than the collection was there, do you think we can actually resolve the issue that way?

If we continue to leave it merged, it seems to me, taking off party colours here, all governments of the past

have unsuccessfully been able to protect the workers that way. Could you see that private collection on behalf of the workers would benefit the worker?

1150

Mr Nolan: I understand the distinction between private collection and government collection is the government employee has perhaps a greater duty of responsibility or has a greater accountability to the government agency. I think that's the issue. The government must put in place the proper accountability channels and enforce them properly and fairly. Anybody can do the enforcement. Why couldn't I do the enforcement? Whether I'm a government employee or a private employer, why can't I do that enforcement, as long as the standards and duty of care that I'm required to meet are the same, regardless of whether I'm an employee of the government or whether I'm a subcontractor contracted out to do that particular role? The issue I don't think is who's doing it; it's what's the accountability process?

The Chair: Thank you very much for taking the time to make a presentation here before us today.

CANADIAN AUTO WORKERS, LOCAL 199

The Chair: The last presentation of the morning session, Canadian Auto Workers, Local 199. Good morning. Is it Mr Allen?

Mr Malcolm Allen: Yes, it is.

The Chair: Good morning, sir. Again we have 15 minutes for you to use as you see fit.

Mr Allen: First off, I'd like to thank the committee for the opportunity to make a presentation before you. My name is Malcolm Allen. I'm the recording secretary of Local 199 in St Catharines. At the present time we represent in excess of 7,000 CAW members working in diverse industries, not just including auto. Personally, I work at General Motors, and part of the brief will deal with General Motors' attempt to see the ESA changed concerning the hours of work, which is extremely crucial to those of us who work for the Big Three.

First off, a brief explanation of who the CAW is, where we come from. We are a labour organization with a membership in excess of 210,000 members, with approximately 143,000 members working in the province of Ontario. What probably is the most misunderstood part is that we are not only auto workers; in fact, we are in a minority as auto workers. I being one who has been in the auto workers sector for 20 years, we have shrunk over the years to the point where we're in a minority in our own union but yet we're still an integral part. So when the auto workers union represents workers in Ontario, we don't speak solely for auto workers. I think that needs to be made clear up front because there's a misinterpretation in the public and sometimes by the government that the CAW is auto and auto only, and in fact we are not.

The brief before you is one that's been compiled by the CAW with numerous people and that all the locals concerned had input into. It's taken great time and consideration by the CAW and the members by looking at their concerns and their needs as far as the Employment Standards Act is concerned. The CAW may be

looked upon as having, in the auto sector at least, contracts that seem rather, shall we say, nice. That's not always the case. I go back and talk to my father who was employed for 29 years in the auto sector and he reminds me of the collective agreements that were signed in the early 1960s that weren't so nice. Without employment standards, there was hell to pay when you worked in that sector.

Basically we have four crucial points that we want to look at. Our position is that Bill 49 dismantles the long-standing guarantee found in the Employment Standards Act against any person contracting out of workplace standards. We believe that Bill 49 seriously limits and in some circumstances denies worker access to justice and the proper enforcement of the standards that remain in the statute.

We also believe that Bill 49 continues this government's destructive agenda of privatizing public services without regard to the consequences upon the community at large and the government's employees who are terminated from employment as a result of that privatization.

Bill 49 fails to address the desperate need for progressive improvements to the current set of workplace standards found in the statute. It's surprising to us in the CAW that we, as a progressive union, seem to be watching a new government which is taking us back in time. For us, that's dismaying, to say the least.

We look at the economy of Ontario and we look at a business sector, at least the auto sector, that shows immense profits and yet wages that are stagnant. In some cases they're actually below real levels of where they were five years ago. Those of us in the Big Three who had collective agreements signed three years ago, in real terms, have not accelerated to the point that equals our productivity gains inside the Big Three, which for us is a step backwards.

Just to point out some of the statistics, the GDP has grown by an average of 1.9, versus 1991's 3.1, and yet consumer spending is lagging. I know in the city of St Catharines, when you go downtown it's like a death bed. The businesses in the downtown area are closing even though the MTO has relocated; mind you, in smaller numbers than anticipated. St Catharines is a dying town and it's only because wages of workers in the real economy have stagnated. The Employment Standards Act, according to what the changes in Bill 49 are looking at, would probably drag them even further. It seems to be a race to the bottom for St Catharines' people, at least, and for no other.

My own employer, General Motors, as most are well aware, reported an obscene profit last year and yet it continues to downsize. There were 9,000 employees in the GM St Catharines facilities 10 years ago; there are now 5,200. We make more product now than we've ever made before, with fewer people. We haven't shared in the productivity gains that GM has enabled itself to derive its profits from, and yet it continues to do so.

It continues to sell plants. It leaves us with the threat of another 1,500 employees who may be out of work in another two years, and yet it turns around and asks the ministry to look at opening up the hours of work from eight to 10 a day, from 48 per week to 56 or more. Yet it's still shrinking. It wants to take a shrinking workforce,

under the Employment Standards Act, according to the amendments it would like to see, and work those who are left excessive numbers of hours; those who are older an excessive number of hours, because there's one thing that's true: We don't get younger, we only get older.

In the plant I work in today you need 10 years to be there. You're not a young employee any more, you're an older employee. The recovery time for your body day to day takes longer as you age. I think that's a given for most of us. I don't see any teenagers around the table. I think we all fully understand that, excluding possibly the parliamentary assistant. The bottom line is, the older you are, the harder you recover. Yet here's an employer who has done remarkably well by all standards and by all accounts, by any economist in the province of Ontario and by its own accounts — it trumpeted quite highly last year how much money it made — yet it continues to whittle away the number of employees it has while it continues to make money.

Now it turns around in the most draconian fashion and asks people to work more than eight hours a day and then asks the government to have the right to do that legally. Not only is that an economic impact on those of us who remain as far as our wellbeing is concerned, there's a legal aspect. Myself, as a parent — I don't quite fall into that chasm now, but I did a few years ago. Living in rural Ontario, as I do, outside of St Catharines, when my children go to school they go by bus. If my employer has the right to keep me beyond eight hours and my children are under the age of 10, as they were not long ago, and my wife's at work, who takes care of the children when I had anticipated that I would arrive home at 3 and my employer told me at 2:30, "You're staying until 5, Malcolm"?

Now I'm faced with the dilemma that the Employment Standards Act says the employer says I can stay and the Child and Family Services Act says I have to be a responsible parent, have to be home to care for those children or I could be charged under that act. Now I face the dilemma of a job to keep the roof over the heads of my children and food on the table or no job at all, and yet being delinquent in my responsibility as a parent to look after my own children. I find that absolutely heinous in the utmost, that an employer would force parents into that type of situation.

If we look at the regulation aspects, Bill 49, in our opinion, restricts and adversely regulates a worker's right to recover what is owing to him or her pursuant to the statutory enforcement process. We believe the bill denies workers the right to make a claim pursuant to the ESA to the Ministry of Labour under as-yet-unspecified minimum dollar limits.

We believe the bill puts a new, more restrictive time limit on workers who wish to file a claim. Workers will only have six months to do so. Representing workers in the workplace, as I have done over the years as a committee person and as a UI rep, I understand time limits, but I also understand what workers need to do to decide for themselves if they wish to follow a course of action. Whether that's an appeal process to the UI commission, whether that's a grievance procedure which has time limits, they need to decide internally, within themselves, do they wish to pursue it?

That process can be timely and there are mitigating circumstances that make that time limit sometimes protracted and drawn out. It could be fear, it could be the fact they're not aware of the time limit and they let it drag on because they have family responsibilities or other responsibilities that enables that process to take so long. The bottom line is they need to have a fair and equitable time limit to make a decision that is unfettered by any sort of fear or coercion, and by dropping the time limit the way the ESA is suggesting here in Bill 49, I truly believe that places a burden on the employee.

We believe the real objective the government has for the ESA is that improvements are needed in the way it is enforced and administered, beyond a question. In 1994-95, when we look at collection, 29% of the orders to pay against employers were not collected and 74% of the total sum of dollars assessed against employers went uncollected. A third of the cases were unsatisfied orders to pay. It seems that you look at one after another after another.

The bottom line is, if the amendments had looked at how we get just severance pay for those who are denied and then have the ministry write an order against an employer and then not be able to collect it, it seems if the ministry had spent more time looking at this aspect rather than the hours of work, which seem to me are going to open up to the point where we no longer can adequately look after families and spend quality time at home because we're going to spend it in the workplace — I think this committee would have taken a great step forward if it had looked at this aspect and cleaned it up to the point where workers collect money equally as well as banks collect loans that are outstanding. It seems that as workers, if we were on equal footing with the rest of the debts that are owed, we'd be better off.

The brief is extensive. I leave it to you to read the rest. I thank you for your time. I know the workers I represent in St Catharines are appreciative of the fact that we were able to come, and I'll take any questions.

The Chair: Actually, we've got barely 45 seconds left, so if anyone just has any quick statement they'd like to make at this time. The questions would have started with Mr Christopherson.

Mr Christopherson: Thank you for your presentation. This is probably the most comprehensive presentation in terms of written analysis and backup material that we've received to date, and I intend to read the entire document. I just want to thank you for coming forward. I particularly want to thank you and a lot of the other leading unions for continuing to stay in this fight, representing not just unionized workers and people who pay union dues but a lot of the vulnerable workers who need your help too.

The Chair: Any other quick statements?

Mr Duncan: Thank you for your presentation today.

The Chair: Yes, thank you, Mr Allen. We appreciate your taking the time to come in and appear before us. With that, this committee will stand recessed until 1 o'clock back in this room.

The committee recessed from 1205 to 1301.

The Chair: I call the meeting back to order for the afternoon session of our second day of hearings on Bill 49.

HAMILTON-BURLINGTON CUPE HEALTH CARE WORKERS JOINT ACTION COMMITTEE

The Chair: Our first group up this afternoon, the Hamilton-Burlington CUPE Health Care Workers Joint Action Committee. That was a mouthful. Good afternoon, folks. We have 15 minutes, just as a reminder, for you to divide as you see fit between your presentation and question-and-answer period. I wonder if you'd be kind enough to introduce yourselves for the Hansard reporter, please.

Ms Michele Columbus: My name is Michele Columbus. I'm coordinator for the Hamilton-Burlington CUPE Health Care Workers Joint Action Committee. With me are Pat Whitfield, president of CUPE Local 794; Mike Tracey, president of CUPE Local 786; and Fran Borsellino, a member of CUPE Local 786. I'm just going to read through my brief and if there's any time left we'll have questions.

The Hamilton-Burlington CUPE Health Care Workers Joint Action Committee welcomes this opportunity to make a submission to the standing committee on resources development regarding Bill 49 amendments to this province's most fundamental workplace standards legislation.

The Hamilton-Burlington CUPE Health Care Workers Joint Action Committee represents 4,000 hospital workers in the Hamilton-Burlington area. We are seven locals, part of CUPE, Canada's largest trade union, representing more than 450,000 members. Our national union is organized into more than 2,650 local unions situated in nearly every major city and town across the country. CUPE members are employed by boards of education, municipalities, hospitals, universities, nursing homes, homes for the aged, electrical utilities, voluntary social agencies, the Ontario Housing Corp and the Workers' Compensation Board.

It is the position of the Hamilton-Burlington CUPE health care workers that the employment standards legislation is among the most fundamental pieces of labour legislation for ordinary working people in this province. The purpose of this legislation has been to establish vital minimum standards designed to protect workers from the exploitation handed out by the province's worst employers. Furthermore, we submit any amendments to this legislation must enshrine a basic principle of continued improvement in the employment standards of workers so that they may be protected from the excesses of the labour market.

The Minister of Labour has portrayed the changes found in Bill 49, the Employment Standards Improvement Act, as housekeeping amendments that would facilitate administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures. On the contrary: The Bill 49 amendments are significant changes designed to frustrate the legitimate claims of workers under the act by undermining workers' most basic rights. Bill 49 attempts to effect major changes to the law as it currently stands. Bill 49 places several new obstacles in the path of workers seeking to enforce their existing statutory rights. The new act alters the manner,

substance and duration of a worker's claim in order to frustrate an individual's ability to obtain a just result in the face of a violation of the law.

Although the current Employment Standards Act has proved to be a relatively weak piece of legislation, the Bill 49 amendments dilute this legislation even further. The improvements in these changes are reserved almost exclusively for this province's employers.

The primary effect to unionized members will be to transfer the cost and responsibility of enforcing public law issues relating to employment on to the shoulders of labour unions covered by a collective agreement. Unions like CUPE will shoulder the hardship of investigation and/or enforcement of all additional cases generated by this procedural change in the law. The reality of this is that labour unions simply will not have the same financial wherewithal as the provincial government to investigate and enforce every claim. Some employment standards claims, despite their legitimate basis and a union's best efforts to proceed, will have to be discarded for financial reasons with no guarantee that the director will exercise his or her discretion to allow the claim under the Ministry of Labour's process of enforcing the act. Unions will have to stretch resources to cover the costs of grievances arising under the collective agreement and the added employment standards claims.

Complaints that are heard before an arbitrator under this aspect of Bill 49 will be heard in a forum that requires the parties to pay for the costs of the adjudicator along with other associated costs of the litigation. The cost aspect puts greater pressure on the parties to settle, which in turn will result in less favourable settlements than would result in the full hearing under the current act. At the end of the day, labour unions will be required to investigate, enforce and fund complaints that the government currently maintains but is now unwilling to address.

In addition, labour unions will face new claims against them by members for whom the unions did not pursue an employment standards claim to arbitration and by other members who were not satisfied with an arbitral ruling concerning an employment standards grievance. Although the duty of fair representation has not in the past been seen as requiring a trade union to represent employees in respect of employment standards claims, this amendment will expose unions to such claims. This could mean that a failure of enforcement under a collective agreement will be seen by the labour relations board as constituting a breach of duty of fair representation. Moreover, for those individuals whom a labour union does represent at an arbitral hearing but were not satisfied with the representation of the union at the hearing or the ruling generated by that hearing, a complaint under section 74 of the Ontario Labour Relations Act may still be filed with the Ontario Labour Relations Board. Thus a union like CUPE might be placed in a number of situations where it will face a duty of fair representation complaint whether or not it proceeds with an employment standards claim.

In effect, unions will be faced with organizational challenges as a result of the government's privatization of the enforcement of this act. The added burden of these financial costs, along with the new legal liability placed on the union, may well exacerbate CUPE locals' abilities

to effectively represent their members. CUPE locals are being given new financial and legal responsibilities along with the new legal liability at a time when their ability to fund these tasks is reduced by the increasing demands of the memberships to counteract many of the government's actions related to the elimination of public sector jobs.

These changes force unionized workers to fund complaints against their employers so that these employees will only be able to enforce their rights if their unions can afford to grieve the dispute. It is surprising that Bill 49 would require unionized workers to privately finance claims enforcing employment standards rights when the government itself will not spend needed funds to enforce these fundamental rights.

In summary, our brief has mainly focused on the amendments related to the new legal, financial and liability issues proposed by the provincial government. It has stated that this amendment is not beneficial for workers and their unions. The changes proposed to this act in general have the effect of reshaping the Employment Standards Act in several important ways.

As previously noted, these changes negatively alter the manner, duration and substance of claims under the act. All these changes seek to limit the ability of workers to enforce their rights under the law. The method by which an employee may recover against an alleged violation of the Employment Standards Improvement Act is significantly changed to limit the worker's ability to obtain full redress under the law. The substance of what may be claimed has been limited under Bill 49 so as to set a minimum and maximum amount that a claimant may obtain as a result of a violation of the act. Finally, the duration of acceptable claims has been shortened in order to reduce the amounts that may be recovered against employers who have violated the law. These changes will reduce the total amount workers may claim from their employers under the act.

1310

As well, these changes will have the effect of forcing many non-union complainants to abandon the Ministry of Labour's dispute resolution system and opt into the court system for resolution of their disputes. Many workers will be unable to afford the financial expense and time required in private litigation. As a result, workers will simply not be able to enforce their employment standards rights and abandon their claim. Union members will be barred from launching a complaint under the investigatory and enforcement powers of the Employment Standards Act. As a result, unions will be faced with new financial and legal obligations that cause difficulty for unions attempting to enforce all their members' employment standards complaints. In summary, employers will face fewer complaints as a result of these changes.

Several underlying themes arise throughout these amendments. The Ministry of Labour is attempting to rid itself of the cost and responsibility of enforcing the act. All the changes designed to channel complaints into the court or grievance arbitration system seem to help the ministry reduce its budget. The alteration to the collection system also aids the ministry in eliminating the cost of funding the enforcement mechanisms of the act. The outcome of this reduction of tasks is a parallel decline in

the Minister of Labour's obligation to enforce the law. Clearly the government has signalled that it has little interest in maintaining employment standards for all its citizens.

Bill 49 repeatedly differentiates claimants on the basis of a worker's labour union status. Workers who happen to be union members are treated materially differently in terms of their substantive and procedural rights from non-union members. The changes to all workers' rights based on union membership is a beacon indicating an end to the universal basic workplace rights enjoyed by all workers in this province for approximately 30 years. Unionized employees will have their rights enforced through a procedure separate from their non-union counterparts. This change has negative implications for the equality of enforcement of employment standards legislation in unionized and non-unionized workplaces.

Finally, the elimination of the universal floor of rights for unionized workers, along with the numerous amendments limiting non-unionized employees from fully enforcing the law, indicates an effort by the government to erode the general level of employment standards in this province. Allowing employers with a bargaining agent the opportunity of setting workplace employment standards will only lead these employers to actually erode current safeguards. Employers will attempt to copy lower workplace standards of their non-union counterparts or attempt to contract out their services to private sector, non-union workplaces, which is currently happening to our health care services. These changes are detrimental to workers and unions alike.

The Hamilton-Burlington CUPE Health Care Workers Joint Action Committee stands in opposition to the changes proposed as briefly outlined. We ask the committee to seriously consider our submission during the process of redrafting this legislation. All of the above is respectfully submitted for your consideration. We thank you for your time.

Mr O'Toole: Thank you very much for a very interesting, thorough presentation, fairly significant and well researched by the four competent people here today, a very detailed report eminently able to represent its 450,000 members locally and nationally. In that respect I think you portray your position as somewhat weaker than it really is. I think you very ably represent your constituent groups.

I don't think this act is intended to deal with that. What it's trying to do under section 3 — the minister has indicated that she will move to part two of the review of employment standards. Right now you make many decisions in your workplace. For example in health care, very few health care workers actually work a 40-hour week. How come it's in the act that it's 40 or 48 hours required? I'm saying there's all kinds of vacation, day-off entitlement, relief time, training time, all those kinds of working conditions which you more than capably represent.

I think what they're trying to do is give you more empowerment to work with your employer. I'd ask you the question — you deal in the public sector primarily — are those unfair employers? The municipal governments, the hospitals, the volunteer boards of those

hospitals, libraries and other facilities — are they what you would call unfair employers?

Ms Pat Whitfield: What do you mean by that? For instance, my local union is in a hospital. I'm the president of a local union. Currently, we have 700 outstanding grievances on violations against the collective agreement. That's a huge amount; that's just for this year.

Mr O'Toole: Those are grievances with respect to employment standards?

Ms Whitfield: No.

The Chair: We've got to stay on schedule. It was a very generous one minute.

Mr Hoy: I'll ask that question. Could you very quickly categorize what those grievances might be?

Ms Whitfield: In my case, it's violations against our collective agreement. If you then dump employment standards on our local, we'll have I don't know how many more.

Mr Hoy: We don't have much time; I'll pass.

Mr Christopherson: Just to pursue that a little further, because I think it's an interesting road Mr O'Toole starts to take us down, you say that you have 700 outstanding grievances, and that's with a public board, to the extent that there is some accountability. You have a collective agreement which gives you rights and strengths and you have labour relations experts, supposedly, on the management side who understand the rules, and yet you still end up with 700 grievances. That's the kind of trouble you're facing. What do you suspect some of the workplaces must be like where there is no collective agreement, where there are just a very few employees who are perhaps immigrant workers, new Canadians, English isn't their first language, no collective agreement, and all they have is employment standards? What will their life possibly be like under this new law?

Ms Whitfield: I think there's a potential that it would be absolute hell, depending on the employer. I'm not saying that all employers out there are going to be violating the act, but we know there's a potential, and when there's no protection like a collective agreement, it's going to be worse.

Ms Fran Borsellino: I'd like to make a comment.

The Chair: Very quickly, please.

Ms Borsellino: With all the grievances that we have in Hamilton, we do have guidelines to follow under our collective agreements and the employers are having a very difficult time trying to follow our guidelines, as it is right now. Once you make these changes to the act, it's going to be much more difficult for unions and non-union employees to work out their disputes.

The Chair: Thank you all for taking the time to make a presentation before us here today.

TURKSTRA LUMBER CO LTD

The Chair: Our next presenter up is Mr Carl Turkstra from Turkstra Lumber Co, a fellow retailer. Good afternoon.

Mr Carl Turkstra: Let me begin briefly with some background information. My name is Carl Turkstra. I operate a lumber company in Hamilton and the Niagara Peninsula, along with three manufacturing companies. We

have 150 full-time employees. The average length of service is just about nine years. I believe we pay above-average salaries for our industry. We have a good benefits package and a profit-sharing policy. Our people work hard to help the company make a profit and we work hard to avoid layoffs and terminations.

Let me say that I have prepared two pieces of paper here. One of them is the statement that I'm reading and the other is a two-page summary in case you don't have the patience.

My company is not unionized. I have very little experience with firing anyone, let alone people who have worked for the company for many years. I can safely say that any employee who was forced to leave the company carried a good deal of responsibility for his situation. He may have built up his own business so that it conflicted with his performance in a serious way. He may have been promoted to a position which he was unable or unwilling to do properly, or to accept training to do that job. His job may have changed to become more complicated and he was unable or unwilling to adapt. He may have refused to take an alternative position even if we did not reduce his salary.

Except for cases of employee theft, we do not want to dismiss a long-term employee for cause within the very narrow definition of the act. It is too inhuman and too brutal. I believe the act should recognize an employee's responsibility for his own situation and not assume the fault is entirely with the employer. I do not know how this could be done, but it would be much more equitable than the present all-or-nothing situation.

1320

In most cases, my company has been prepared to offer a termination settlement as specified in the act even though we do not think it is fair. After all, we and our employees have paid a fortune in unemployment insurance over the years and almost never used it. As a practical matter, I can live with the payment specified in the act to help a person find a new job. However, a person who has failed in a position, perhaps intentionally, should not be able to pocket a large sum of money for doing nothing and walk into a new job. Why should a person who does his job badly receive twice as much pay as someone who does his job well?

A very troubling situation is when someone finally leaves to operate his own successful business. For some time, his behaviour caused serious problems to us as he built up his business on our time. If he will not resign, we have to force the issue. We have to find and train his replacement. We are the injured party, not the employee.

I had two cases where I believe an individual deliberately set out to be terminated and even hired a lawyer to plan strategy before we initiated discussions. In my opinion, severance payments should be seen as damages under the law and paid out on a regular basis until they run out or the recipient finds a new position. During this period of severance an employee should be required to look for a new job, and when the severance runs out the employee can of course start to collect unemployment insurance.

An even greater problem than the amount and method of payment of severance is the poisonous environment in

which termination now takes place. Like divorce, termination of a long-term employee is a traumatic experience for everyone, including all the other employees. Through newspaper articles and the advice they give potential customers, some lawyers are systematically undermining the act.

The act sets minimum limits on company payroll and length of service before severance must be paid. Some lawyers tell their clients that everyone is eligible no matter how short a period they may have worked or what they have done to cause their dismissal. The act sets a standard of one week's pay per year of service. Some lawyers state in newspaper articles and advise their clients to expect one month per year.

In situations where employees have individual contracts or collective agreements, business is protected from civil action as long as they honour their agreements. Businesses without labour contracts are fully exposed to the machinations of ambulance chasers.

In the few cases I have dealt with — and I must say I am not a major victim of this problem; I'm simply objecting here on principle — we've had grounds for dismissal for cause, but would rather reach an equitable settlement. If negotiations fail and lawyers get involved, I have little choice but to dismiss for cause since they will sue me no matter what I do. So far, no former employee ended up with more money than the amounts we would have offered in the first place. However, lawyers on both sides did very well, in one case receiving more than the former employee.

The most pernicious wrinkle now being promoted by the legal profession and apparently being supported by the courts is "constructive dismissal." This theory holds that if an employee does not do his job well or if his job no longer exists, an employer cannot give him a lesser job or lower his status below his former peers even if his income is maintained. Essentially, one is not allowed to hurt an employee's feelings, even if he richly deserves it. Under such principles of constructive dismissal, a Premier could not shuffle his cabinet.

If I understand them correctly, the proposed changes to the act are a significant improvement. They reduce time limits for complaints under the act and prohibit employees from filing both a civil action and a complaint under the act. I would suggest that these limitations be broadened in two ways:

First, a person who accepts a cheque for severance pay as prescribed in the act from an employer should not be able to go to the civil courts later for more money. The director should not always have to be involved to prevent separate civil action.

Secondly, the concept of constructive dismissal should either be prohibited or clearly defined. An employer simply must have the right to demote supervisory personnel who perform inadequately and to offer alternative employment when reorganizations occur.

Those of us who do not have formal contracts with our employees depend on the Legislature to set reasonable rules that are fair to all parties. We also depend on you to protect us from predatory professionals who are making a very difficult situation even worse.

Mr Jean-Marc Lalonde (Prescott and Russell): Thank you, Mr Turkstra. I want to congratulate you for your presentation. A man like you deserves to be congratulated for the type of business that you're operating, especially in the lumber business.

With regard to the fact that this law will give or authorize the employer to extend the number of work-week hours, do you think there's a chance that accidents would happen more often and then your WCB fees would increase by the fact that being at work longer hours there's definitely a chance of more accidents?

Mr Turkstra: It depends to a certain extent on the job. A retail sales clerk would not be a problem. I would think that in some of the manufacturing operations the longer hours increase risk when we have overtime and so on. People get very tired. We're not supposed to say this, but especially the older people find they cannot work as long as some of the younger people can. Yes, I would say there is a risk of that. As a policy, in my company we discourage it.

Mr Lalonde: What's your feeling on the fact that we want to privatize the collection of the arrears or the other —

Mr Turkstra: I'm not a lawyer or an expert. My judgement would be that an individual should be able to look to the government to help him force his employer to obey the law, if that answers your question.

Mr Lalonde: But at the present time will be able to hire the private collection agency instead of going through the government.

Mr Turkstra: I would say that most of the people I deal with are not able to deal with that financially. They're not qualified as people to deal with that kind of process. I think they really have to depend on the government; otherwise they'll have no recourse.

Mr Christopherson: Interesting presentation. Two questions only: One is rhetorical and I don't expect an answer. Your thoughts on the other would be appreciated. The first one is, given some of the shots you've taken at lawyers, I just wondered if your relative Herman Turkstra, the lawyer, had a chance to see this before you presented it.

Secondly, on page 4, the third paragraph from the top that begins, "In situations where employees have individual contracts or collective agreements, business is protected from civil action as long as they honour their agreements. Businesses without labour contracts are fully exposed to the machinations of 'ambulance chasers.'" Would not one solution to that be to encourage employers and employees to enter into a collective agreement by forming a union in the workplace?

Mr Turkstra: That's a very deep question. Essentially, I'm one of those people who runs my business very much in detail. I really do not find room in there to share that responsibility and authority with anybody else, so I would rather not have to deal with an official union organization. But if that's what my employees chose to do, that's what I would do.

With respect to my brother, he practises litigation of a different kind and he always disagrees with everything I do.

Mr Christopherson: I'm glad you have answered.

Mr O'Toole: Thank you, Mr Turkstra. It would appear to me, from reading and listening to your presentation today, that you are indeed a very progressive employer. I would suggest also that with your conservative approach with employees and the outlook, it would appear to me that you're looking after your employees. I guess the question I want to ask you is, workplace harmony, getting along with the people who are working for you — like profit-sharing, that progressive move — does that motivate and encourage productivity?

Mr Turkstra: The answer's yes. I think that everything you do to establish good communications with staff at all levels and kind of an open organization and the idea that they have a vested interest in the success of the company, all of that encourages commitment to hard work, and in my case the commitment to looking after the customers, which of course is what we're all about.

1330

Mr O'Toole: That's just excellent. I can't compliment you enough, and I mean that sincerely. I'm sure you had it in here, but how long has your business been in operation?

Mr Turkstra: Forty-two years.

Mr O'Toole: Forty-two years, and you intend to be long. Do you see the world of work and the nature of work — you're trying to respond to customers, right? Have you altered your hours of the business being open or provided service to the customers by having to respond to the demands of customers?

Mr Turkstra: We responded to the movements of the competition and then we did a survey to see whether it did us any good and decided that basically it doesn't. We never open on Sundays. Nothing will make us open on Sundays.

Mr O'Toole: Isn't that the right place to make decisions, in the specific workplace? We were speaking earlier with CUPE workers and those employers and employees don't have the option of, say, closing a hospital on a Sunday. In your case as a person of private business, you're able to make those decisions, it would appear, in cooperation with the employees. You consulted with them.

Mr Turkstra: We don't have a very formal structure so it's very hard to say. Do we talk about it before we do it? The answer's yes. We talk to the managers, the managers talk to their people, and we have never had any problem whatsoever with employees having a problem with our hours.

Mr O'Toole: I think the employment standards is really trying to get into that very kind of empowerment for the participants in the workplace.

The Chair: Thank you very much, Mr Turkstra. We appreciate it.

Mr Baird: If I could, just on a point of order, Mr Chair, indicate to Mr Turkstra, all of the Hansard will be going for the full review of the Employment Standards Act. Many things you mentioned aren't in the bill, nor that of presenters earlier today, but that will be going in and there will be a complete review of the act over the next eight months.

GOLDEN HORSESHOE SOCIAL ACTION COMMITTEE

The Chair: Our next group up will be the Golden Horseshoe Social Action Committee. Good afternoon. As you've heard me say countless times, 15 minutes for you to divide as you see fit, and please be kind enough to introduce yourselves for Hansard.

Mr Gerald Diffin: I'm Gerald Diffin and with me is Rev Robert Wright. We're going to jump right in. Who we are is part of the package. You can read it if you're interested.

Thank you, Mr Chair and committee members, for the opportunity to comment on the bill. I'm not going to comment on any individual clauses in this bill but will give my opinion on the message this bill sends.

First, if business leaders have requested this type of legislation from the provincial government, it tells me that they aren't skilled enough to compete without exploiting their employees.

Second, the government, by entertaining this type of bill, admits it doesn't have the skills required to govern a province where both business and workers can prosper.

Third, the government spin on this bill and Bills 7 and 26 is that the province is open for business. But what it attracts is business that exploits not only its workers but also its suppliers, customers, the environment and governments that it deals with. This type of business usually doesn't prosper and when it closes creates financial chaos in the community. In the small community I grew up in and worked in for 60 years, the business that had the reputation of exploiting its employees and the environment didn't last very long.

Fourth, when the Premier goes on a sales junket to countries he is hoping Ontario can export to, he is telling them that the quality of Ontario goods is suspect. In my working life I have worked in retail, construction, heavy industrial, some places unionized and others not. Even in unionized shops some people for various reasons are more vulnerable than others and get abused and exploited, but in almost every instance these people get even. Unhappy workers produce products of varying quality. Evidence the days of protest and withdrawing of services of doctors.

To sum up, Bill 49 allows employers more leeway to exploit the most vulnerable Ontarians. My feeling is that government that isn't committed to protect all of its citizens from unscrupulous employers, retail sales people and criminals, supply them with a clean, safe environment and help them to live a healthy and fulfilling life isn't fit to govern.

Bill 49 does nothing to address the issue of abuses in the workplace. Thank you.

Mr Robert Wright: As my friend Mr Diffin has indicated, my name's Robert Wright. I'm a minister and also a community development worker, at present unemployed in both capacities. I shouldn't say I'm unemployed; I just don't get any wages for what I'm doing. I've indicated in the personal comments which I've made by introduction why it is I happen to be in this situation.

I was asked to just reflect a little bit on my experience as a pastor within a congregation that's in the city of

Welland. I served there for 26 years between 1959 and 1985 before going west to work with my denomination out there on a regional basis, then had a year and a half in Jamaica.

When I came to Welland in 1959, I found that there were many people who had gone through the experience of the Depression years and the early war years who were subjected to all sorts of exploitation and discrimination. Abuse is the only word that can be used for it. They worked hard to build up their unions and the churches worked with them, other community groups, and business people worked along with them to see that they had unions and the protection which unions could give.

Although the Niagara region has a high percentage of the population who are unionized, there were a lot who fell outside that. So those who enjoyed the benefit of union membership wanted to share that with other people within the community and they worked hard on the legislative front by electing representatives to various levels of government who would represent them and also by trying to see that laws were enacted which would give protection to the most vulnerable.

There are many stories that are very unappetizing of the kind of things that happened in those early days before people had unions, before they worked for those kinds of legislative changes, stories of people who would be forced to make their wives available to their foreman in order that they could preserve their jobs and be able to put food on the table for their families — virtual slavery in the situation. That's the kind of background that we come from.

We worked hard and we worked passionately to see that changes came about. As a pastor, on a daily basis I was having people come who were subjected to terrible conditions in their employment but who were unable to speak out safely because of threats and intimidation from employers. In order to protect their families they had to knuckle under to their bosses and not raise any complaints. So it was necessary to build some organizational, structural protection by which they would not be subjected to that, by which they could have protection.

We worked therefore in setting up different organizations, and I've listed those on the third page of my introductory remarks: a youth home; a cooperative nursery and day care centre; cooperative housing, and that's been well-established through Niagara Peninsula homes; Community Legal Services; Community Resource and Action Centre; Women's Place, all of which are dedicated to enhancing the wellbeing of people in community.

However, we are seeing increasingly these very important institutions in our society being undermined and destroyed. Just yesterday in the Welland paper it was noted that the housing help centre funding is being taken away by the provincial government. This means an agency which was helping people, the homeless people or people who were threatened with homelessness, that service is being taken away from them. The proposed changes to the employment standards legislation are just one more in a long series of attacks on the people of this province and this country.

We've been sitting through the hearings this morning and listening to various presentations, and I listened to

everything that's said here from the point of view of the people who are subjected to that sort of attack. I myself, as I said, am presently unemployed because of cutbacks in the various agencies and areas. The type of work I have done all my life is even more badly needed than it has been, yet there isn't the funding to do it.

1340

Yes, there is a new economy. I've heard that expression, a new world of work. But for those who are at the bottom of the economic scale, that new world of work does not bring any hope of a future. We meet people daily who are subjected to that situation. As I say, the changes that are proposed to the employment standards legislation seem to me potentially harming those very people for whom they were set up.

I would make the claim that far more is being done to destroy our country, Canada, by these actions of governments such as the Chrétien-Harris axis than by actions of separatists in the province of Quebec or anywhere else. The attack on our sovereignty as a highly respected country in the world family is coming from the fiscal and corporate separatists who are attempting to destroy the humane and caring social order we have built in Canada.

I've chosen my words carefully because the kind of separation that they are promoting, instead of the harmony of our society, which we have worked for over these years, the separation between the wealthy and the poor, those who are outcasts of this society and those who enjoy increasing affluence and increasing wealth, is doing more to destroy our country than any of the other things I've referred to.

It's because of my commitment to these ideals that I'm proud to be a part of the Golden Horseshoe Social Action Committee and that I'm pleased to be here today with my friend Mr Diffin, who has joined me in this presentation.

The brief of the Golden Horseshoe Social Action Committee is before you, and I think we'll just stop at this point in case there are any questions any of you have. Some people might have bits of disagreement with some of the things we've said.

The Chair: Thank you very much. We have four and a half minutes, so one and a half minutes per caucus, and this round of questioning will commence with the third party.

Mr Christopherson: A couple of quick questions. I want to thank you both for your presentation. I noted that much of yours, Mr Wright, dealt with the issues of the Judaeo-Christian values as they apply to society and how one constructs a society. I wanted your opinion on why you think so many churches in Ontario, churches that normally try to stay at arm's length from the formal political process, have been speaking out more and more about, quite frankly, a democratically elected government's use of their majority to take the province down a certain path. I know they don't do that lightly. Can you give me your thoughts on why you think that's happening?

Mr Wright: You certainly are right when you say it's not done lightly. It's because there is in the basis of our Judaeo-Christian heritage the whole concept that because of the sinful nature of humankind, there's a tendency for the rifts between the poor and the rich to develop greater

and greater — the rich to get rich and the poor to get poor. So in the foundations of our faith, there's the principle of the year of jubilee, for instance, which is a time when everything will be redistributed, when there'll be an opportunity for everybody to start over again and sharing to take place.

Of course, in the New Testament, in the beginning of the Christian era, Jesus took up that concept and the whole concern for the poor. Those who were marginalized, in the terminology we use now, got priority. In the Roman Catholic Church, there is the emphasis on the preferential option for the poor, it's called, which is contained in the Scriptures, within the traditions, and it's this kind of motivation which is back of the emphasis which there is.

Just from a practical point of view, I've had ministers say to me they desperately need help because they've never experienced a situation where there was so much unemployment, so much hardship being experienced. They don't know how to deal with it. The various denominations are trying to give some guidance and support in that. I had a Roman Catholic priest who told me that within his congregation he has never seen so many middle-class, middle-income, middle-aged people who are leading lives of quiet desperation because their whole life is being destroyed by what's happening in our society.

Mr Baird: I listened very intently to your comments and I enjoyed your brief and appreciated the time you took to come out. I appreciate more than anything, though, the orange paper that clearly lists the groups that are members of your network. Often we don't find out whom people are speaking for, so I certainly appreciated that, everything ranging from retirees to religious and other social groups.

Maybe just a comment, if anything, on your presentation, as to what our motives are as a government. You mentioned briefly some broader political issues and economic issues and what not and the work you've done on them. Certainly our motivation is to try to turn the province around. We can certainly disagree, as I do with my friends on the committee, as to how we do that, but I think it's very important, just to respond to your comments, that it's very much our goal too.

We may go about it in very different ways, but certainly our goal is to create an Ontario that's prosperous, first and foremost one that creates jobs, because it's our very strong view that the best social program out there is a job. We realize that even a year after the election there are far too many people looking for work, and that's really the focus of many of our efforts. While we may share many of the end goals, maybe the means to the end are somewhat different, but that's very much our goal.

I think we all suffer, as a community, with economic and social programs and very much want to see them rectified. That's basically our motivation as a government. We spoke of the cuts. I don't know if there's a point to getting into a broader political debate. We have one way of doing it. We felt the way that was used, the status quo, wasn't working and that we had to try a different way. I suppose we'll be held accountable to that

with the voters. Anyway, thank you very much for your presentation.

Mr Wright: Mr Diffin had a comment on that.

The Chair: I'm afraid Mr Baird used his whole time, so you can incorporate it in your answer to Mr Hoy, perhaps.

Mr Hoy: Perhaps we'll be able to do that. Thank you for your presentation. I appreciated it. It's a philosophical and realistic look at what's happening today as it pertains to this bill.

In my conversations particularly with nurses I find that the stress levels, they tell me, among the public are rising almost to a point of mental disabilities, so I appreciate much of what you said. If you care to make that last comment on the record, go ahead.

Mr Diffin: All I want to say is that I keep hearing, "We have to fix it." We don't agree with what you're doing. We think it's wrong, but you have the position to implement what you do. Are you willing to commit yourself? In a year or two years, if what you're doing doesn't work, will you try and fix it again or will you stay down the same path? Somebody's going to be right in this and somebody's going to be wrong. Are you going to be man enough to admit that you're wrong if you are wrong? I'll admit I'm wrong if I am.

Mr Baird: We're very fortunate that we not only have to admit it, but the ultimate judgement will be made by the people, rightly or wrongly. The people of Ontario will make the ultimate judgement as to whether we've been successful. I do hope though, taking your point well, that we have the courage to admit —

Mr Diffin: I don't want the people to make the decision. I want you to stand up and say that you are wrong. I'll say it if I'm wrong. You will say it if you're wrong.

Mr Baird: Agreed.

The Chair: Thank you both for taking the time to come before us here today.

1350

CANADIAN AUTO WORKERS, LOCAL 504

The Chair: The next group up will be the Canadian Auto Workers, Local 504. Good afternoon. Again, we have 15 minutes for you to use as you see fit between presentation time or questions and answers.

Mr Andrew Paterson: Thank you. I appreciate the opportunity to appear before you. I will read through the brief. The brief is not as large as it appears. There are some logistics at the back that you can study at your leisure.

As an introduction, who are we? We are Local 504 of CAW Canada. We represent close to 2,000 families that have members working in the following companies: in Hamilton, Camco, Westinghouse and Brown Boggs; in Burlington, BIW Cable, Hoover, Fisher and Ludlow, Northrop Grumman and Tallman Bronze; and in Dundas, El-Met Parts. I have been the president of this local for some 15 years now. We, as a local, were chartered by the United Electrical Workers in 1937 and merged with CAW in 1993. As you can see, we've been around for almost 60 years.

We understand that our national organization, CAW Canada, has presented a comprehensive brief to this standing committee on resources development. We merely wish to add our support to the CAW brief in its entirety and present some simple views from the local's perspective.

History teaches us, or should teach us, that to understand changes to or introduction of legislation to govern a people, one should be conversant with the conditions extant during that period of change to allow for knowledgeable conclusion as to the necessity and/or justification of the action.

Our position: The written brief and the attendance before this committee are designed to clearly and unequivocally communicate our opposition to the contents of Bill 49. Our opposition to this proposed legislation is based on four crucial points of contention:

Bill 49 dismantles the long-standing guarantee found in the Employment Standards Act against any person contracting out of workplace standards.

Bill 49 seriously limits, and in some circumstances denies, workers access to justice and the proper enforcement of the standards that remain in the statute.

Bill 49 continues this government's destructive agenda of privatizing public services without regard to the consequences upon the community at large and the government's employees who are terminated from employment as a result.

Bill 49 fails to address the desperate need for progressive improvements to the current set of workplace standards found in the statute.

As a background to the circumstances we reproduce here, as you can see, a small synopsis from the *Spectator* as to the deterioration of real wages in the 1990s.

We now refer to Ontario's stagnant economy: Are labour laws really the problem? What is the rationale for weakening employment standards in Ontario as we approach the 21st century? Underlying the government's proposal is the claim by many businesses, although not all, that labour laws are impeding their efficiency and competitiveness and hence undermining business investment and employment. Relax the constraints and obligations governing employers, the argument goes, and they will be better able to thrive in the competitive marketplace. Investment, jobs and growth will be the payoff. Workers will have to do their jobs in less hospitable and less safe work environments, but at least more of them will be working.

Little evidence beyond the unsubstantiated claims of particular business leaders is offered, however, to support the argument that Ontario's labour laws and employment standards have in any measurable way stood in the way of higher employment or faster economic growth. Indeed, it is highly questionable that Ontario's economic problems have anything to do with the alleged lack of competitiveness and flexibility of business whatsoever.

Ontario's employers are already highly cost-competitive within the Canadian and continental marketplaces, at least with regard to labour costs. It is not a failure of competitiveness and profitability that is constraining our further growth. If anything, it is a failure of the business sector's success to spread through the rest of the econ-

omy that is holding back growth and employment. The further erosion of employment standards, by ultimately forcing workers to work harder and longer for less pay, can only exacerbate this problem.

There is a figure 1 on page 46 which indicates the already lopsided nature of the current economic recovery in Ontario. Since the trough in the last recession, Ontario's real GDP has grown at a sluggish annual rate of 3.1%. Only two major sectors of demand have grown faster than this annual rate: business investment in machinery and equipment, annual growth rate of 6.9%; and Ontario's booming exports, annual growth rate of 11.2%. These are the sectors of our economy that are most sensitive to considerations of cost-competitiveness, flexibility and profitability, and it has been in these sectors that our weak recovery has been rooted.

Domestic demand, on the other hand, has been weak and continues to act as a drag on further economic expansion. Consumer spending has grown more slowly than GDP as a whole. This is quite unusual, since consumer spending typically accelerates during the recovery phase of the business cycle. The government sector has been stagnant and during the past year has shrunk notably. Investment in housing and non-residential construction has collapsed. These domestic sectors of our economy, accounting for 85% of total demand, depend not so much on business competitiveness and flexibility as on wage and salary incomes, the taxes that are paid from those incomes and consumer confidence. These have all been undermined by downsizing and layoffs in both the private and public sectors and a continued atmosphere of impending doom among many consumers.

Other direct evidence verifies the enhanced competitiveness of Ontario on grounds of labour costs. As indicated in figure 2, which is attached, hourly total compensation costs, including wages, fringe benefits and payroll taxes, in Canada's manufacturing industry, centred in Ontario, are almost 10% lower than in the US. This represents an improvement of close to 20% since 1991, when an overvalued exchange rate priced Canada's manufacturers out of the newly unified FTA marketplace.

Indeed, the improvement in Canada's cost position is due primarily to the subsequent correction of the exchange rate to a more sustainable level. This suggests again that business leaders are barking up the wrong tree when they call for weaker labour laws in order to ease the competitive constraints they face. The big-ticket, macroeconomic issues such as exchange rates, interest rates and aggregate demand conditions are the dominant factors that deserve the main attention.

Within Canada, Ontario's labour cost-competitiveness has been almost exactly stable, again as illustrated in the attached figure 3. Real wages in Ontario have only kept pace with wages elsewhere in Canada; a continuing small but stable wage premium in Ontario of about 60 cents per hour reflects only the higher cost of living in this province, as well as the concentration of higher-productivity industries here. There is no evidence that changes to labour laws or employment standards enacted by previous provincial governments in any way undermined Ontario's cost-competitiveness within Canada. The recent rebound in Canadian manufacturing output, and to a lesser extent

manufacturing employment, has been concentrated in Ontario-based industries, notably auto assembly and parts production. This further testifies to the continuing attractiveness of Ontario as a site for the location of mobile industries.

Perhaps the most notable feature of recent wage trends in Ontario, as well as in the rest of Canada, is the continued stagnation of real wage levels, a development unprecedented in post-war economic recoveries. As summarized in figure 4, real hourly wages in Ontario have increased by a feeble 0.7% since 1992. In contrast, the real value of output per employed person in Ontario, a standard measure of productivity, has grown by over 5% during the same period: over seven times as fast. If anything, workers are receiving far too small a share of the output they produce with greater efficiency year after year. Even many business economists now admit that this weakness in real wages is a dominant factor undermining growth. Weakening employment standards legislation so that for example some workers will no longer receive holiday pay for working on statutory holidays or that other workers will have greater difficulty obtaining back pay owed them by employers will only worsen this problem.

Growing productivity, enhanced competitiveness and stagnant wages — all this translates into a tremendously lopsided distribution of the gains of economic growth. As shown in figure 5, the growth of total wage and salary income has considerably lagged the growth in total GDP, growing by an average of 1.9% per year since 1991 versus 3.1% for GDP. It is little wonder that consumer spending has stagnated. Corporate profits, meanwhile, have exploded by an average of 17% per year during the same time. The argument that the corporate sector is shackled by burdensome regulations is completely at odds with the empirical evidence. Business is the only sector doing well in our present economy, and making things still easier for employers will hardly redress this imbalance.

1400

In sum, what net impact will the erosion of employment standards have on the precariously unbalanced Ontario economy? Any purported improvements in the business sector will be more than outweighed by further weakness in wages and hence further weakness in both consumer spending, especially on big-ticket items like homes and cars, and income tax revenues. Domestic spending by consumers and government, and hence our overall economy, will continue to stagnate.

Of course, business leaders promise that more jobs will be created if their power over their employees is further enhanced. In responding to the demands of a competitive, stagnant marketplace, their lives are probably not made any easier by having to obey the rules and regulations governing fair employment practices. It is always easier to respond to competitive pressure by simply tightening the screws on the workforce than by developing more innovative products, new production methods, new marketing strategies etc. But the experience of the past five years has shown that business profitability and competitiveness do not translate automatically into a vigorous, well-rounded and sustainable economic recovery. Ontar-

ians have been waiting a long time for the trickle-down effect; there is no reason to believe that undermining remaining legal protections in the workplace will do anything to hasten its arrival.

Given all of the above, the case has not been made for decreased protection but rather increased protection.

While we could agree that perhaps the preceding synopsis is all too short, we can reasonably conclude that if there was a need or rationale for change, a government with the welfare of its people as a priority would strengthen ESA rather than weaken it.

By the way, all of our employers named in our introduction are profitable; as a matter of fact, some of them have posted record profits each succeeding year in the 1990s and are heading for record profits in 1996.

We finish with just a thought: Confucius said, many years ago: "In a country well governed, poverty is something to be ashamed of. In a country badly governed, wealth is something to be ashamed of."

I thank you for your indulgence.

Mr Baird: Just a quick thank you for your presentation. I enjoyed particularly the charts in the back of your presentation, certainly something I'll take back.

Mr Hoy: Thank you for your presentation. There are various economists around the country who pinpoint certain areas of why the economy is going bad, but I'll tell you one that a man on the street told me is causing problems in the economy. I had not met him in many years and I said, "How are you?" He said, "I'm an OPSEU worker and I don't know if I'm going to have a job in the future." That's stifling the economy somewhat.

Mr Christopherson: Andy, thanks very much for the excellent presentation. In the few seconds I have I would just underscore the last bullet point on page 2, where you note, "Bill 49 fails to address the desperate need for progressive improvements to the current set of workplace standards found in the statute." I think the message there is that yes, there need to be changes made to this law, but they need to be progressive changes, which this isn't. Indeed, what needs to happen is a reversal of Bill 49, which is going to take away some of the rights that are already in there now.

Mr Paterson: I thoroughly agree.

The Chair: Thank you again, Mr Paterson.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 3906

The Chair: That leads us to the next group, the Canadian Union of Public Employees, Local 3906. Good afternoon.

Ms Catherine Hudson: Good afternoon. By way of introduction, my name's Catherine Hudson. I'm the president of CUPE Local 3906, which represents 1,500 teaching assistants and part-time instructors at McMaster University. I'm also chair of the Ontario University Workers Co-ordinating Committee, which represents about 15,000 CUPE university workers throughout the province in diverse occupational groups: physical plant, library workers, foodservices, support staff, teaching assistants, sessionals, part-time instructors.

I'm pleased to have the opportunity to make this brief presentation on Bill 49 and bring my concerns about this

proposed legislation to your attention. I'll be looking at a specific aspect of this bill in the context of the Conservative agenda for Ontario.

I'll stray from what's written here to note with interest what I learned from the paper yesterday and today about certain proposals being temporarily withdrawn, as I understand it; that is, proposals that would allow employers and unions to negotiate standards for work hours, statutory holidays, overtime and severance. The minister apparently told the Legislative committee that while the provision is being dropped she still supports the idea and it will reappear later this fall when a more comprehensive review of the act is launched. She is quoted as saying, "Given that there will be a fuller discussion about the framework of employment standards during the upcoming review of the act, we believe this provision should be considered in the context of these future discussions." So clearly "temporarily withdrawn" is what I understand from the information here.

I'm going to speak specifically to those aspects of the proposed changes because I certainly think they will reappear in the fall. I would like to take the opportunity to urge the government and this committee not to reintroduce these particular aspects of the proposals in the fall. Currently the law forbids a collective agreement to maintain any provision that's inferior to the working conditions contained in the Employment Standards Act. This measure maintained a historic notion of an overall minimum standard of workplace rights for all workers. Prior to the enactment of legislation that regulated aspects of the workplace, employers and employees were governed by common law. Individual parties to an employment relationship were entitled to enter into any negotiated employment relationship that was not considered illegal. In practical terms, this meant that employers used their superior economic power to impose poor working conditions on their employees.

In the 19th century that started to change. A long time ago it was recognized by the Legislative Assembly of Ontario that this was a clear imbalance of power, and action was taken to begin, at least, the long, slow process of changing that imbalance of power by creating workplace standards in areas such as health and safety and minimum wages for women and children. Various pieces of minimum workplace standards legislation were consolidated ultimately into the current Employment Standards Act in 1968.

The philosophy behind the legislation grew with the inclusiveness of its statutory terms. The law accepted the inalienable right of all workers to labour in a workplace that provided minimum standards of decency. Thus, the legislation now provides basic employment standards for the vast majority of Ontario's workers relating to specifically minimum wages, maximum hours of work and overtime, public holidays, paid vacations and severance pay, among other items.

1410

The Bill 49 proposals, which I'm given to understand have temporarily been put on hold, should they be reintroduced in this comprehensive overview, will erode this historic development in Ontario's labour law by permitting the workplace parties to contract out of important

employment standards guarantees. The ESIA proposes to allow a collective agreement to override the legal minimum standards concerning all those aspects of work if the collective agreement "confers greater rights...when those matters are assessed together." Employers would be enabled to disregard this previous floor of rights and have the opportunity to attempt to manipulate such provisions as overtime pay, public holidays, vacation and severance pay in exchange, for example, for increased hours of work. This change, should it be brought back into the proposals, effectively would allow private parties to create a set of employment standards, a task traditionally — and for good reason — reserved for the Legislature.

The question — and this is one of many — of how labour unions and employers are to measure whether or not a negotiated agreement confers greater rights when assessed together is unanswered in the law which introduces the idea. This will become an issue in its own right. Collective agreements which already have enhanced rights could theoretically have concessions imposed on them and yet comply with the new ESA. Parties are being asked to value and compare non-monetary rights, such as hours of work, with purely monetary rights, such as overtime and severance, with mixed rights, such as vacation pay and public holidays.

Thus, by statute, concession bargaining is encouraged and as a result different parties, private parties, will be legislating different sets of employment standards rights for each workplace. What were formerly minimum benefits protected by law will now become permissible subjects for bargaining, labour board hearings, arbitration hearings, as well, of course, as strikes. This is a prescription for poor labour relations and increased conflict. In small bargaining units particularly, with relatively little bargaining strength, the erosion in minimum entitlements will negatively affect standards of living and working conditions for families throughout the province.

For university workers, these amendments, whether temporarily on hold or not, are particularly provocative. Universities are at the mercy of this government. The quality of mercy in this case has been very strained — to the tune of \$400 million in cuts to the post-secondary sector so far. To date, the universities have responded by using the tools handed to them by this government, raising tuition as one example. I have no doubt that as employers the universities will also find that these amendments to the Employment Standards Act have handed them yet more tools with which to deal with the crisis invented by the government. Many of us are going into bargaining where we will find out whether or not the concessionary amendments to the ESA will be utilized.

In the context of the overall Conservative agenda this particular aspect of Bill 49 adheres faithfully to the philosophy of privatization, as do other aspects that I'm not addressing here. Employment standards will be privatized since this piece of legislation provides no basic floor of rights on the issues I've highlighted. Bill 49, in some of its other aspects, also coincides with this government's desire to downsize itself and leave matters previously held to be public in the hands of private interests — specifically employers' interests. Government is apparently no longer interested in guaranteeing basic

workplace standards for working people. Working people will now have to negotiate those standards for themselves, to the best of their ability and collective strength.

In Bill 49, as in previous legislation such as Bill 7 and the comprehensive enabling legislation of Bill 26, the government has shown clearly that it has no interest in furthering the public good of the many; it has aligned itself firmly with the private gain of a few. In this respect, it is redefining the role of government as it has existed in Ontario for many decades.

To conclude briefly, in the proposed amendments to the Employment Standards Act, as in other legislative changes already completed or contemplated by this government, we are indeed seeing a revolution turning back to the 19th century.

Mr Hoy: Thank you for your presentation. We don't have much time here for questions, but I noted that you said there would be different sets of employment standards rights for each workplace. If that is the case, would there not over time be a domino effect where eventually we could move to the lowest denominator of employment standards?

Ms Hudson: Clearly, and I think that would clearly be the effect.

Mr Hoy: That's of concern?

Ms Hudson: Obviously of concern, and I'm speaking from the position of a unionized group, to the non-unionized employees, I think collective agreements may be, through this concessionary encouragement by statute, negotiated down to non-union and the general level should decline, I would think.

Mr Christopherson: Thank you, Catherine, for an excellent presentation. I wanted to ask you about the middle paragraph on page 5 where you state that "the government has shown clearly that it has no interest in furthering the public good of the many. It has aligned itself firmly with the private gain of a few." Could you expand on that in the few moments that we have?

Ms Hudson: In a few moments I don't know how much I could expand on that. I think I addressed this more specifically in my Bill 26 presentation, where it seems that the downloading of the agenda of downsizing itself seems to be specifically aimed at the private good of a small minority.

Generally speaking, if the public services are cut and more privatization takes place, the trickle-down effect is clearly to the vast majority of people, whether they feel it in the form of non-access to services through user fees or the non-existence of services. Try to get through on some of those phone lines, for instance, if you're a parent looking for support from a delinquent spouse. These kinds of things are just disappearing, and they affect broad numbers of people. Who do they benefit? Ultimately, who benefits by this? It's very difficult to see, in the case of this specific amendment to the ESA, who benefits other than employers, and the greater benefit will go to the larger and more powerful on the whole.

Mr Derwyn Shea (High Park-Swansea): You begin with an interesting background of the history, and I appreciate having that put before us. Behind this I have the submission made by the information technology group yesterday in Toronto. As I listen to your presentation,

something that I'm troubled by, and I've heard it again more this morning, is the difficulty — I can relate to the arguments that you're putting forward and I can empathize with them in part as they relate to traditional kinds of employment. One can talk in terms of whether you're on the smelter floor, whether you're in the sawmill, wherever you may be, or university office, but there's a significant change taking place.

Like Mr Christopherson, I'll turn you to page 5, because the phrase that suddenly hit me against what they had said was "workplace standards," and indeed the whole issue of "workplace" is now becoming a major concern. The minister is trying to sort of read the future as change of work takes place, and I'm wondering how you address that, because the attempt to deal with what you call concession bargaining is trying to recognize the fact of the traditional modes of labour changing, and the traditional ways of interpreting the standards of employment also being attacked. How do we deal with that in a way that recognizes distance work?

Ms Hudson: Many of my members are engaged in delivering distance education. What standards don't change are standards that people need to pay the rent, need to be able to pay for the groceries. Whether they do that by working out of an office in their basement or they do it by working on the shop floor, guaranteed minimum standards must exist. And I haven't even addressed the issue of enforcement, which is a whole other thing. Whose responsibility is it to guarantee to the public that there are minimum employment standards? In my view and in the historic behaviour and interpretation of government's own role in this province, it has been the government's developed responsibility to guarantee minimum workplace standards.

The Chair: Thank you very much. We appreciate you coming before us here today.

1420

ED GOULD

The Chair: That brings us to Mr Ed Gould as the next presenter. Good afternoon.

Mr Ed Gould: Good afternoon. I'd like to thank the committee for giving me this time. My brief will probably be brief. I don't have much detail; I have four pages here. I'm just here today representing myself. I'm not paid by any business group or union. I'm here on behalf of my family. With what I've been reading in the papers lately and looking over different notes, I think what this government plans to do with these changes to the standards act is just terrible.

Anyway, there was no day care today, so I had to bring this fellow up here. He's the future. So I'm a little bit upset at that. I can understand why some of the women with no day care can't participate. The other thing is that I don't see anything here on this agenda about evening. I had to take time off work to come here today. Unfortunately, my daughters and my wife had to work and their employers wouldn't let them have time off. So I can definitely see how this standards act could be changed and could be detrimental to the workers of this province in the future.

I'm also here because when I first called up to make some time, I realized that the Niagara region was basically cut out. There was no time given or dates or anything in the region of Niagara, and there's over 400,000 people there. But like I said, I'm just here today representing myself and my family.

Bill 49, as far as I'm concerned — I've got the act here; I was going through it. It would be nice if they put it in plain English, just plain English. Common sense would be plain English. Could you tell Mike that — plain English? Because it would be nice for us plain people.

Anyway, I'd like to say that basically Bill 49 would weaken workers' rights all across Ontario. Big, powerful corporations that make profits, that have the dollar advantage, along with the law firms to back them up when it comes to stepping on workers on the shop floors and across the hallways of the offices — I believe the Minister of Labour, the Honourable Elizabeth Witmer, is wrong when it comes to the Employment Standards Act and making any kind of changes. It took many years for workers to build on the previous act, and I hope this one doesn't pass.

I can just see by going through this here right now that you're putting a ceiling on claims. I don't know if you're a worker or not, but when you don't have money, it's pretty upsetting. If you can afford a lawyer, you're stuck with somebody else defending for you. Maybe they decided to defend for a little less. I notice there's something about a cap at \$10,000, rather than the whole amount. I notice that you're trying to squeeze the time from two years to six months, which I believe is basically really inappropriate, considering looking at the Small Claims Court. Really, can this be true that workers deserve less? Is this government willing to give us less protection as workers? It's shame on you.

I actually believe that you should be stepping forward into the future and looking at the common sense. The common sense would tell us not longer hours of work, but shorter hours of work. You can obviously see if 300 workers working three shifts could be combined into 200 workers working two shifts, it would be a net loss of 100 jobs. It will be hard to explain that there will be 100 people out of work because other workers are working 12-hour shifts or 10-hour shifts. I believe the unemployment in this province is a shame and a shambles. You've got the 10% unemployed out there looking for jobs. I think it's this government's duty to actually shorten the workweek to 32 hours, which would better shorten the UI lines in this province. The old 48-hour week hasn't worked. A mandated reduction by this government would immediately, at once, put thousands of Ontarians back to work — thousands — and the level playing field would be 32 hours a week.

I believe this government is playing fastball in a pool of sharks. We as workers are being left in the water without a life support system to defend our rights. Shame on you again. What about the persons who can't defend themselves because of human barriers? I see nothing in this bill about that at all.

The word "housekeeping": That's a shame. It's just a new buzzword which is only a play on words by this government concerning the Employment Standards Act.

This word is being used to reduce workers' rights in this province by the Mike Harris government. Shame on you again. And let me tell you something. If I was to tell you today that tomorrow you're coming to work at 4 o'clock and you don't have an option, what would you do today? Can you answer that question? Because my daughters are going through this right now, for all this part-time work that you guys are making.

Again, you want to decrease the size of government; you're going to leave a pool of workers out there trying to defend themselves with millions of dollars lost in wages. I can personally sit at this table here and talk about incidents with my daughters and my entire life.

And now you want to turn it over to private collection agencies that will charge money to find money that I already should get? It's a shambles. It's a disgrace.

Like I said before, I'm sitting here for my family. They couldn't be here today because they couldn't get time off work. I don't see that in the bill there, where it says I can demand time off for family activities or even coming here today and speaking on this.

What about public holidays? Under the past, at least you had them. What about the protection for any worker who doesn't want to work Canada Day? Would you defend Canada Day off, with the employer saying, no, you are going to work Canada Day? Can you answer that today?

Where's the protection for employees who are abused concerning shifts? I also believe that the crimes that some of these corporations are leaving in businesses to individual employees, the fines are not big enough. I think they should be tripled so they'll stop doing it.

It's only the government with law and order that's able to enforce Ontario labour laws. What you're doing as a government is you're putting the wolves in charge of the chicken coop. That's what you're doing. And that's my short brief.

Mr Christopherson: Thank you, Mr Gould, for your presentation. We had someone earlier who came forward saying they didn't represent any particular organization, either corporate association or union, but did go on to espouse the virtues of this bill. It's good to see a private citizen come forward and make the similar case that they don't represent anyone other than their own family.

I think it's also, quite frankly, sir, a good example and lesson for the government members to begin to see some of the frustration that is beginning to take hold as the lack of common sense in the Common Sense Revolution is beginning to become clearer and clearer to the general population.

I don't know that I have any particular questions for you, other than to say that there's very little you said that I and my colleagues don't agree with in terms of the impact of the overall agenda that this government has for the people of Ontario and its implications for the average working person and their family. All I can say to you quite frankly is that we will continue to share those beliefs and will continue to do what we can.

You talked about the lack of the legislation helping you and your family to be here today. You need to know that this government not only thought this was only minor housekeeping; they didn't think this bill was

important enough to have public hearings. They were going to ram it through in a few weeks before the summer recess of the Legislature and it was only because we pushed them and embarrassed them and forced them to admit that there's more here than just minor housekeeping that we even got these public hearings. So there's a lesson to be learned in terms of the process around Bill 49, not just the substance. I thank you, sir, for taking the time and making your deputation the way you have.

1430

Mr O'Toole: Thank you, Mr Gould, for your sincere presentation. I sense a degree of frustration. I just want to ask a couple of specific things and maybe draw some things to your attention, outside of rhetorical comments.

In the act, those workplaces that have a collective agreement would not be able to negotiate less than the current standard collectively, when you look at it. When you're looking at overtime entitlements, it could mean time off in lieu, depending on the workplace, which could address the issue of your daughters and your family needs and individual needs, as opposed to setting provincial standards that "thou must."

Many workplaces are changing, would you agree, today? Firemen work 12-hour shifts; police, nursing, public service, the service sector industries, universities — I'm not sure what they've been doing for the past four months. My daughter goes to university. She only goes six months. I'm not sure what they're all doing for the other six months. Do you understand? The world of work is drastically changing. Would you make that concession?

Mr Gould: I would certainly say that it's changing, but not for the better, sir. I would also like to remind you —

Mr O'Toole: No. We've only been in for a year. We're trying to improve it.

Mr Gould: — I'm not speaking here on behalf of unions. My daughters do not work in any unionized facility. They work in places where they can't stand up to their employer now because their shifts are changed daily. They don't know next week what they're working. They don't know whether they're working the holidays. That's why I'm here. I'm upset. They couldn't come here today because, I'll tell you, one of them would rip the skin off your back.

Have you ever been terminated at 9 o'clock in the morning on Friday? You go in, everything's peachy, and then that's it on Friday morning. Then you've got to go through and find lawyers and you've got to go through the department, which quite frankly wasn't good enough in the past.

Mr O'Toole: It's frustrating, there's no question about it. I guess the other thing I wanted to talk —

Interruption.

The Chair: Sir, that's the last outburst I will tolerate from you.

Mr O'Toole: I have five children and they're all working. In fact, they were laid off and the rest of it too. It's difficult. There aren't enough jobs.

Your point I would like to perhaps pursue there would be, you mentioned a 32-hour week, which is widely

touted in much of the labour literature you read. Would you be prepared to take a proportional reduction in pay? Let's say, as an employer — and I think unions have a challenge to examine alternative work week arrangements.

For sure, job security, that's their mandate. I worked in a workplace, and I'll tell you, if you took one hour's overtime entitlement away from the employee, you'd be in trouble. They want the 48 and 50 hours a week. I've worked for a large company, both hourly and salary, and if you were to entitle people to 32 hours a week — what's happened in the last 30 years since employment standards is, both members of the family are working, and they're working to pay the taxman to keep the social system and all the other demands of society in place.

So it's changing. I think you have to look at it realistically. The world of work is changing, and the regulations that guide that through the process have to respond.

Mr Hoy: I want to thank you for your presentation today. I did take note that you are concerned with the cap at \$10,000 as a maximum. It gives me concern as well. We had a presentation the other day where the people were owed \$23,000, not executive-type employees. It was suggested that perhaps those were the only type of wage earners who would go over that cap, so it's clearly not the case. People on incomes substantially less than what we'll call the executive wage can make claims for more and have in the past made claims for more than \$10,000.

As well, there's been a great deal of concern about the enforcement of the act. I think, clearly, from your statements, that would be something that you would want, and certainly from your whole presentation, one can see that you are interested in maintaining minimum standards. I appreciate your comments.

The Chair: Thank you, Mr Gould, for taking the time to come before us here today. We appreciate it.

UNITED STEELWORKERS OF AMERICA, LOCAL 1005

The Chair: The next group up will be the United Steelworkers of America, Local 1005. Good afternoon, gentlemen. Again, we have 15 minutes for you to use as you see fit. I wonder if you'd be kind enough to introduce yourselves for the Hansard reporter, please.

Mr Bob Sutton: I'm Bob Sutton, chairperson of the committee. This is Gary Howe.

Mr Gary Howe: Local 1005, United Steelworkers of America represents over 10,000 active and retired members at Stelco's Hilton works in Hamilton. On behalf of these members, the local is pleased to have the opportunity to present our concerns regarding the proposed changes to the Employment Standards Act as proposed by the Minister of Labour in Bill 49.

When introducing Bill 49 on May 13, Labour Minister Elizabeth Witmer made the following statement: "...encourage the workplace parties to be more self-reliant in resolving disputes and make the act more relevant to the needs of today's workplace." She also stated, "They will also focus ministry attention on helping the most vulnerable workers." Nothing can be further from the truth than these statements.

The changes proposed — and they are major changes — will clearly benefit employers and deny

justice to both unionized and non-unionized employees in this province. There is nothing in these proposed changes that will protect the rights of the most vulnerable workers. The changes will, however, make it easier for employers to deprive workers of their basic rights. The existing employment standards, which we consider minimal, have protected Ontario workers for several decades.

Mr Sutton: I want to comment here that in putting this brief together, our local's PAC only commented on a few of the issues. Quite frankly, we just don't have time in 15 minutes to present all of our concerns, so we've kept things short and are just dealing with a few issues. Go ahead, Gary.

Mr Howe: One of the major concerns that the local has with Bill 49 is the fact that it will allow companies to pressure unions to negotiate away minimum standards, providing the contract provides greater rights when all standards are assessed together. Will severance pay be negotiated away during good times, when workers feel they will never have to depend on it? This amendment will also allow employers to pressure unions to negotiate away rights which many new employees may be expecting to be part of their employment contract.

Mr Sutton: I want to comment on this too. A person takes a job and they can pick up the Employment Standards Act and they know what they should have at the workplace. However, if you switch jobs, maybe get a little better wage increase or you change jobs for a reason, you work there for five or six months and it gets to be summer, they're really busy and all of a sudden you find, "Hey, the union here has agreed to seven days a week work when we're busy," and you've got no way to balance your family and work life. There are just things you've grown to expect that may not be there, thanks to this kind of a bill.

Mr Howe: One of the most bitter strikes in recent Ontario history was the Radio Shack-Steelworkers' strike in 1981. One of the main issues of this first-contract strike was a wage increase of 10 cents an hour above minimum wage. If 10 cents an hour over minimum wage can be such a major issue, it would be easy to see all of the other standards, such as vacations, hours of work, statutory holidays and severance pay, becoming major bargaining issues as many employers try to reduce these basic rights. If Bill 49 is passed, Ontario will be the only province which will allow basic employee rights to be negotiated to below the legislated minimum.

Mr Sutton: Just on this Radio Shack strike, if, for instance, they were successful in getting a dime, that would be \$200 a year. What would be stopping Radio Shack from also putting on the bargaining table, "Hey, we're going to take away the minimum vacation?" At that time, it was less than \$4 an hour minimum wage; that would only be \$160. "So you guys can have a dime raise, providing you give up a week of your vacation." That's the sort of thing that's going to be wide open, and there will be all kinds of bitter disputes over it.

1440

Mr Howe: Unions may in the future, when trying to achieve some improvements to employment standards, find themselves being met with an employer demand to

reduce one of the other standards to below the provincial minimum. The changes proposed in Bill 49 will cause greater labour-management conflict, rather than harmony.

Presently, the act allows an individual to make a complaint under the Employment Standards Act which is handled by the employment standards branch. The adjudication system is without cost to the parties. The orders are enforced by the legal department of the Ministry of Labour. An individual is free to file complaints with the employment standards branch without the approval, assistance or financial help from their union. The complaint is handled by the regional employment standards officer, who has the investigatory powers, who can conduct an inspection, audit or examination. The employment standards officer may attempt to mediate a settlement or make a binding decision on the matter in dispute. The system also permits unions to choose when they wish to devote time and resources to assisting employees in the resolution of alleged employment standards violations.

Bill 49 changes this. An employee covered by a collective agreement is not entitled to file a complaint. The complaint must be processed by the union through the collective agreement, grievance and arbitration procedure. The bill contemplates that an arbitrator paid by both the union and an employer will have all the powers now exercised by the employment standards officers, referees and adjudicators. This, unfortunately, is inaccurate. Arbitrators do not have the investigatory capability of the employment standards branch and will not be able to match the consistency of results that the act has had under public enforcement.

Mr Sutton: Just to show you something here, I've got a press release dated September 4, 1994. It's on the last page of the brief. I'll read the fourth paragraph:

"Under the Employment Standards Act, an employment standards officer has the right to request and receive access to any business records, including all payroll and employment records, that are now related to an investigation of a possible violation of the act."

Is this government prepared to let the unions have that kind of power, that we can walk in and look at our companies' business records? I don't think so, but it's something you've got to keep in mind, because we don't have that kind of power or ability and we can't pursue those kinds of complaints.

Mr Howe: The provincial government, in proposing this change, is not assisting the individual in a case where the union does not have the capability and resources to litigate protracted cases under the collective agreement and Employment Standards Act. These proposed changes do nothing to improve the employees' position where the employer is insolvent or bankrupt and does nothing to restore the recovery amount under the employee wage protection plan, which has already been dramatically reduced by the Conservative provincial government.

For our union, the change from an individual complaint to a union's responsibility to enforce the act poses a real challenge and probable tremendous hardship on unions. The financial, legal and human resource burden on managing every employment standard complaint could be monstrous. The failure by the union to properly

address every complaint could also result in a duty-of-fair-representation complaint before the Ontario Labour Relations Board. The government is shifting the cost now borne by the employment standards branch to investigate, settle or determine complaints to unions, without financial help from the government.

Mr Sutton: You'll notice here we also put another press release from the ministry, dated December 11, 1995. It talks about a company that owed 100 workers approximately \$5,000 each. That's in unpaid wages, termination and vacation pay, so this was the employees' money. It went to court by the ministry. It was appealed. It was appealed a couple more times and it took seven years to settle. How many unions, especially in a plant-closing situation of 100 people, could afford to go through the court system for seven years?

It's not going to fit together. The unions, especially the smaller unions, can't afford to take on those kinds of cases. Everything that's proposed, whether it goes through arbitration, the arbitrator is going to end up in the same place, where his decisions can be appealed too. You guys are right out to lunch with your ideas.

Mr Howe: In conclusion, Local 1005's political action committee must state that no one concerned with fair treatment of workers or citizens could support the proposed amendments contained in Bill 49. The amendments will harm the rights of the most vulnerable employees, reduce the level of possible compensation and allow employers to escape their employment obligations.

The Chair: There's a minute and a half per caucus. The questioning this round will start with the government members.

Mr Tascona: I'd just like to comment on a couple of matters. I have some experience in labour relations and in fact I was an employment standards officer at one time. I'd just like to comment on your remarks with respect to the September 15, 1994, press release in terms of the powers of the union. If a union is at a hearing in front of an arbitrator, they always have the power to subpoena documents, they have the power to ask an order from the referee, and those powers haven't changed. They'll have access to that information, so the powers are there for the union.

With respect to —

Mr Sutton: Can I comment on that?

Mr Tascona: I'm just going to comment on your comments, because you do have the rights.

With respect to severance pay, you should be aware right now that the Employment Standards Act allows a union to contract out of severance pay minimum standards. That has been in the act for many years and that's not something that is new, and in fact it has been a system that has worked very well with respect to plant closures and allowing unions to get fair settlements, and they actually represent their workers to get the severance pay. So that's been in there, that you can actually contract out of the minimum standards.

I'd like to also comment on your remarks with respect to insolvency. If the federal government would act and strengthen the Bankruptcy Act, then there would be greater protection for the workers, because 67% of the claims aren't paid out because of insolvent employers. I

share that view with you, but the thing is you can't ask the province to fund something that the federal government should be doing.

With respect to the large manufacturing case, I had some involvement with that case with respect to one of the parties — it wasn't the directors or it wasn't the employer, but I will say this: That was the only initiative that the government could do, because they had to go after the directors. Because the company was insolvent, they went after the directors. Very difficult case, but it started off at the lower level and went to the Court of Appeal, and we've heard from the garment workers that that's what the employers do out there. They go bankrupt, so the only avenue we have is to go after the directors, and we did that.

Mr Sutton: It's nice that you did that, but you're asking the union to do that on their own?

Mr Tascona: Go to the federal government and make them change the Bankruptcy Act.

Mr Sutton: We've got as good a chance of going after the provincial government.

Mr Tascona: You've got another government. Go ask them.

Mr Hoy: Thank you for your presentation today. We kind of walked into the conversation of disclosure from the company to the union in certain situations. I have some experience at disclosures of information and I can't go into that, it would take too long. But a lot of times certain information was blacked out and wasn't provided, in order to protect the competitive nature of that business with another. So I can understand your feelings in this regard, that they want to have some privacy in the competitiveness that evolves, and then also your comments about complaints on union representation before the Ontario Labour Relations Board. I noted that as well.

Mr Christopherson: I want to thank you both for your presentation. Consistent with the history of Local 1005, and I notice you're celebrating your 50th anniversary, you're in the forefront in this community of fighting for not just organized workers but unorganized workers too.

I just want to point out that the government has done this before on the issue of the bankruptcy and that unions ought to go to the federal government. In fact, yesterday there were a couple of times when the government, in my opinion, was trying to blame a union representative for not going after the federal government rather than accepting their own culpability in slashing away, as you point out in your document, the employee wage protection plan which was there already in place, and they took it away when they came into power. So I feel they continue to have absolutely no credibility on that issue, and I think they ought to be ashamed of themselves for suggesting either going to the federal government or somehow the unions haven't done their job because they have decided to take away a right that was already there.

1450 I want to ask you one quick question. Local 1005 is still the leading labour organization in our community, and you can stand up for yourselves any time, anyplace, anywhere and have and always will. I believe one of the reasons they pulled back from the encouragement to

concessionary bargaining was that they were hoping the unions like yours would back away and leave the unorganized out there struggling on their own. Can you tell me why that's not going to happen, why it's important for an organized local like yours, a leading local, to fight for unorganized workers?

Mr Sutton: One really clear example in Hamilton Dofasco's a non-union plant. However, everything we have the employees at Dofasco have, the same wage, same benefits, same everything else. It's important that stays that way because it keeps the two steel industries competitive, as well as the fact that that's the way Dofasco keeps the union out. We have to speak for ourselves and, unfortunately, we have to speak for Dofasco workers too.

The Chair: Thank you both for taking the time to come before us here this afternoon. We appreciate it.

NIAGARA SOUTH SOCIAL SAFETY NETWORK

The Chair: The next group up is the Niagara South Social Safety Network. Good afternoon. Again we have 15 minutes for you to divide as you see fit, if you'd be kind enough to introduce yourselves for the Hansard reporter, please.

Mr Don Comi: My name is Don Comi. On my left is Connie Grundy and on my right is Nancy Bousfield. We are all members of the Niagara South Social Safety Network. Thank you for allowing us to make a presentation today. I have a comment I would like to make at the end of it.

The Niagara South Social Safety Network is a body of individuals and groups who have joined together to assist one another. We assist one another not only with direct and immediate help but also by working collectively to change unjust conditions and so enhance the quality of life for ourselves and others. A basic concern of ours has been the effect of downsizing and cutbacks on people within our communities. We are committed to working in solidarity with each other in the struggle against unjust social conditions and to working towards positive social change in our community.

We are also committed to realizing the principles of healthy communities. Healthy communities are characterized by wide community participation and the involvement of the social, health, economic and environmental sectors in working towards the goal of a healthy community. Access to a satisfying job and a decent wage are basic to a healthy community. Our commonsense observation is reinforced by the research literature that strongly and clearly relates the health of our people and the health of our economy.

Full employment is basic to a healthy community. A major component of healthy communities is the provision of free collective bargaining within an environment which provides safe and fair working conditions. It is well known that when such basic employment standards are enforced working people will be protected from social and economic injustice and society will be healthier and the economy will flourish.

We are therefore greatly concerned about changes proposed to the Employment Standards Act which are

being initiated under the guise of deficit cutting and debt reduction, but which we feel are actually designed to augment already excessive profits of multinational corporations and, even more fundamental, remove controls over the ever-increasing power of these corporations who determine the wellbeing of governments and the people they represent. In addition, we are concerned about shortsighted small businesses who support further deregulation of employment standards without thought to the harm this will do to the profit levels when workers' incomes are lowered and working conditions are harsh.

To understand the present situation more adequately, it is necessary to be reminded of how the present employment standards came into being. As industrialization developed in Canada, in common with other nations, exploitation of working people increased. Power was concentrated in the hands of owners and, as enterprises grew even larger, the personal element was removed from relationships. This distancing in human relationships made it easier for exploitation to develop.

As the union movement grew and as more progressive representatives were elected to parliaments, people worked with increasing enthusiasm towards the humanizing of the social and economic order. A major component of that movement was the development of a code of minimal standards to be followed in the workplace and procedures for enforcing those standards. In 1977, under the Progressive Conservative government of that time, the employment standards legislation was passed which pulled together under one act a number of employment standards.

The experience of people within our membership indicates that present employment standards still tend to be biased in favour of employers. What is needed is not weakening but enhancing protection for workers, especially those of minority status, immigrants, women and workers represented by smaller or weaker unions.

We feel that the changes being proposed to the employment standards legislation will in fact increase rather than decrease the exploitation of working people by unscrupulous employers. This drastic regressive step, along with cuts in social services and changes in labour legislation, will lead us back into the harsh conditions experienced during the previous 1930s Depression. We therefore urge you to reconsider the proposed changes and instead put in place legislation which will enhance the wellbeing of the citizens of this province.

An example of how this plays out in personal life is described below. Contrary to commonly held myth, people want to work. They want real jobs. In this time of high unemployment, workers are already vulnerable to abuse by employers. The labour ministry tends to be weak in standing up to employers for the rights of labour, let alone reducing their role further. Non-unionized workers in particular often have no other recourse. We know of a situation in which employees who are mechanics are not being paid fairly according to current legislation regarding overtime and holiday pay.

The following is another example of injustices to employees and danger to the public. A large, multinational company has bought out and amalgamated smaller, locally operated bus lines. Some bus drivers have been

hired back at reduced wages. The bus company now operates about 95 school buses, many of which are aging. It has very recently been advertising to hire mechanics at below-average wages. About three people will be responsible for maintaining the fleet of buses, one or two of whom will be licensed mechanics.

However, we know experienced licensed mechanics are unwilling to accept this heavy workload at these below-average wages. They say the company will not find experienced, qualified mechanics at these wages. Yet these people have a responsibility for maintaining a very large fleet of vehicles in which our school children are transported. Finding qualified employees to ensure the safety of children should be a top priority. This example illustrates the dangers of privatization and deregulation.

It is also unfair to hold the mechanics responsible for the safety of vehicles when employers hire an insufficient number to maintain a fleet. They may not even get to inspect or work on that particular vehicle. Yet if a person on social assistance or unemployment turns down such a job offer, they may lose their benefits. If they quit because of an unsafe workload, they may not be entitled to UI. And what of the likelihood of intervention and assistance if they complain about their employer to a labour ministry that is weakening employment standards still further? Where do they go?

We would also point out that the decision to implement workfare further endangers effective implementation of humane employment standards. Programs being proposed leave greater possibilities for exploitation of people who are at the bottom of the economic scale, unable to fend for themselves in many ways and forced to place themselves at the mercy of supervisors of projects whose primary aim will be to get the most work out of the employees with the least possible safeguarding of working conditions. We need work, not workfare. We need safe, decent working conditions at a living wage with the protection of free collective bargaining.

There are other alternatives. In particular, we would urge you to give consideration to the proposals put forward by the Canadian Centre for Policy Alternatives who in their Alternative Budget have shown that debt reduction can be achieved as well as greater self-reliance with greater control by Canadians over their economic wellbeing without reduction of social programs. This can be achieved by committing our economy to measures such as full employment policies, along with a fair taxation system.

The housekeeping changes proposed for the Employment Standards Act are in fact another thrust of the wedge set in place by Bill 7, aimed to bring Ontario in line with the structural adjustment programs being imposed on governments by the World Bank and the International Monetary Fund for the giant transnational corporations whose agents they are.

1500

Specifically we reject the notion that the proposed changes will increase self-sufficiency and flexibility for anyone except employers. There is in our society an increasing reliance of employers on low-wage, part-time and casual employment, especially for younger people. Workers such as women, immigrant groups and unskilled

or semi-skilled employees are often without union protection and are therefore particularly susceptible to unscrupulous, unhealthy and dangerous conditions set down by employers.

By contracting out enforcement and collection processes, such workers are put at a great disadvantage. Workers' livelihoods and wellbeing are much too precious to be put up for ransom to privateers whose sole concern is maximizing their financial profits.

By including employment standards within the collective bargaining process, badly needed resources of unionized working people are tied up with this process and not what they should be doing. Rather, the establishment and maintenance of such standards are rightfully a responsibility of the whole community, working through the democratic process to set in place policies which will safeguard workers' rights. Similarly, those who do not have the protection of union organization will be in much more vulnerable situations.

This applies also to the proposed shortening of the period of time for laying complaints and processing them. The most vulnerable in society become even more susceptible to abuse from a system over which they have decreasing control, as well as decreased protection from that abuse. It is our understanding that the justice system is working towards a unified two-year limitation date. We support a two-year limitation period for all legal matters. We do not support a six-month period which denies workers fair access to due process.

The kind of intimidation which legislation of this sort brings into employer-employee relationships drastically increases a sense of insecurity, the potential for greatly increased suspicion and friction between employers and employees, results in increased labour unrest, productive inefficiency and contributes to general economic decline. Increased labour unrest leads to productive inefficiency resulting in general economic decline.

In closing, we urge you as strongly as we possibly can to abandon your proposals to set the clock back in regard to employment standards legislation. Groups within our network, including community outreach workers, other community activists and unions are committed to resisting draconian dehumanizing changes to our Employment Standards Act and to establishing a process for education and advocacy which will encourage and facilitate informing workers of their rights and acting with them to correct the many injustices which are bound to result from this legislation. Thank you.

I'd like to make one other comment. I made this comment to the committee that was holding hearings on the CPP, changes to the legislation: It seems that every day Ontarians in particular are being hit with changes and cuts by the federal government, the provincial government, the municipal government, the regional governments — every day. It's like a fire truck going down a road and every building on the street is on fire and, "Which one do we try to put out first?" It's you guys who are lighting the fire. Maybe it's time we took your matches away.

The Chair: That leaves us about 30 seconds per caucus to make a brief statement. Let's see, it would be the official opposition can start the round this time.

Mr Lalonde: Just a quick question. You stated on page 5: "Some bus drivers have been hired back at reduced wages. The bus company now operates about 9 school buses, many of which are aging."

Mr Comi: Right.

Mr Lalonde: That's practically impossible because they supervise this very closely.

Mr Comi: Who does?

Mr Lalonde: The ministry. You're not allowed to have a school bus on the road that has more than so many years; I believe it's five or six years. I could tell you that I'm definitely in favour of workfare for those who are capable of going back to work. That is the 30 seconds.

Mr Christopherson: Thank you for an excellent presentation. I appreciate it very much.

With the very short time I have I'll just point out that one of the things you say that I think is extremely profound is also supported by somebody on the other side of the ledger. You say, and I quote: "In this time of high unemployment, workers are already vulnerable to abuse by employers. The labour ministry tends to be weak in standing up to employers for the rights of labour, let alone reducing their role further."

Yesterday we heard from the Markham Board of Trade, which proudly said, "The Markham Board of Trade applauds the government's decision to significantly reduce its role in the administration and enforcement of the Employment Standards Act." There's no need to question whether or not what you are saying is the reality and the truth; it's very clear for everyone to see. Thank you very much for being here today.

Mr Baird: I appreciate the time you took to prepare your submission and for coming today. Just a quick remark, though, on your last comment about governments of all parties at all levels. All three parties in this province have governed the province over the last 10 years and have gone through difficult times. Local and municipal governments are doing the same thing. These governments are all elected by the people who reside there, and I think there are many problems; you mentioned the CPP problem. People have elected governments of all parties, Conservative included, that have done a bad job of managing this province and many jurisdictions within it. To ignore the problems that are there and just hope they'll go away is not the answer. I think there's an earnest attempt by all parties — I know the two previous governments certainly took some very difficult decisions to deal with those problems, and that's certainly our motivation. I just want to put that on the table, because I appreciate the angst that it's causing.

Mr Comi: I'd like to comment on that.

The Chair: Very briefly, please.

Mr Comi: If you check your own records you'll find there are many corporations that have not paid their taxes for many years, that have deferred taxes; but, damn it, if you go and collect those taxes off those people and if they don't pay their taxes, take their business. If I don't pay my taxes, the city of St Catharines will come and take my home. If the government does not have the gumption, for lack of a better word, to get off their butts and collect the taxes that are owing, then it's time they

started looking at something else instead of hurting the little guy. The corporations that are profiting — these are profiting corporations that are making billions of dollars a year — are not paying their fair share. It's time they did. If the taxes were collected there would be no deficit; there would be no debt.

The Chair: Thank you for your comments. We appreciate your making a presentation today. Is Mr Hart in the room? No.

Interjection.

PETER CASSIDY

The Chair: I'm aware of the scenario, thank you, Mr Cassidy, but I just figured I'd ask once. In the absence of an answer you're welcome to take his place, as it were, so please join us. We have 15 minutes for you to divide between presentation and question-and-answer period.

Mr Peter Cassidy: Mr Hart was unable to attend today and I was asked at the last minute to substitute for him, and there is also the situation that apparently there have been some changes in the matters before this committee, which is something I wish to speak on. Partly because of that, I do not have a written brief that I can hand to all members of the committee now. I have some notes I can provide to the Hansard reporter for transcription later.

To explain myself, my name is Peter Cassidy. I'm a consultant working with community groups, unions and individuals here in Hamilton and throughout the province. I used to be a lawyer with McQuesten Legal and Community Services, a legal clinic in the east end of Hamilton. Before that I used to work for a living.

I appear before you today as a self-appointed representative for the rich and powerful of this province. I would like to start the same way I did when I had the chance to present on Bill 26: by congratulating Mike Harris and the Progressive Conservative Party for putting revolution on the agenda. You are to be congratulated for your brilliant strategy of wooing the voters of Ontario by promising the impossible: doing away with the deficit while cutting taxes. You're worthy of nothing but praise for the way you managed to ram through the early part of your agenda, the cuts in welfare, the gutting of labour legislation, the slashing of transfer payments to municipalities, universities, schools and hospitals. We're now poised for even greater success in the Common Sense Revolution: Hospitals are closing; pregnant women are unable to find doctors; plans are under way, apparently, for superprisons for adults, boot camps for the young; and one of my personal favourites — one of the members spoke on this — is work camps or the equivalent for those on welfare.

1510

I must warn you, comrades in the revolution, that the revolution is in danger. The peasants are revolting, as I always say. Hundreds of thousands of people are marching through the streets of Ontario demanding that the revolution slow its pace. Will the government of the day listen to the people? Incredible as it may seem, there's actually a chance that the government may listen to people, particularly as we look at what is happening with

these proposed changes to the Employment Standards Act.

First of all, why hearings? We didn't need hearings to cut welfare. We didn't need hearings to attack the poorest and most vulnerable in the province. We didn't need hearings to roll back labour laws to pre-Second World War days, though I understand Mr Christopherson was able to hold some hearings hinging on that. Why do we need hearings on cutting the standards of working people?

I know there are some people in what's called the opposition, or the alternative government or whatever, who still believe there's some sort of pre-revolutionary idea of public debate and discussion on legislation. They just don't seem to understand that with the Common Sense Revolution there is no room for discussion and debate; there is no room for thinking. In the words of a great poet, describing a situation somewhat similar to this government:

Yours is not to reason why,

Yours is but to do and die.

If holding hearings on changes to the Employment Standards Act is not bad enough, it turns out that these hearings may actually not be the sham we in the corporate elite thought they would be. There's actually, it seems, some chance that these hearings may result in changes to the proposed amendments, and not just minor cosmetic changes. They might actually result in substantive changes to the legislation. Imagine my shock and horror when I read in the paper today, "Province Delays Plans to Lower Job Standards." I find that shocking. I find that incredible.

It seems that what may be happening is that the government or some people in this committee have been listening to people and have decided that maybe they want to stop and think about it. I know there's something in there about bringing these changes in later, but let me say on behalf of the business community that we do not accept any delay. We insist that you follow through on the basic mandate you have to lower the living standards of the people of Ontario promptly, without delay, without thinking. That should be done.

Some of you wonder why these changes are so important to employers. What is the meaning of the Employment Standards Act? For those of you who believe that you have some role to play in thinking about these things and analysing them, let me say that employment standards essentially set the minimum that any employee is entitled to receive and that any employer has to provide, which means, by what we in the business community call the rising tide effect, an increase in the minimum affects everybody — raising them, and a decrease in the minimum affects everybody — lowering them.

As a simple example, if every employer in the province is required to provide a minimum one-week vacation to certain employees, that is the minimum. Every person thinks they're entitled to at least one minimum vacation, and those who can, try to get more than the minimum. So some people get two weeks, some people get three weeks and those in a particularly strong bargaining position get four weeks. Of course if you raise the minimum, if you raise that one week to two weeks, then those on two

weeks want to move to three and so on. What we as the employers of the province expect is that you will lower the minimum, lower the floor, and that, we expect, will have the effect not just of lowering those at the lower end — if you take away, for example, people's right to vacation, which we urge you to do — people should not have a right to vacation. They're here to work. If you take away the right to vacation for anybody, then not just those who get the minimum of one week now will drop to zero, but those at two weeks will drop to one or zero, those at three will drop to two or one or zero and so on. That is what we want. We want you to move ahead as promptly as you can in lowering the standards.

How, you may ask, do the proposed amendments to the act do it? One of the key ways, as I understand it, had to deal with provisions where there is a collective agreement. Essentially speaking, instead of setting out separate minimum standards for such things as vacation pay or hours of work, they could all be bundled together and any one of those particular individual standards could be lowered so long as, theoretically, "the collective agreement confers greater rights...when these matters are assessed together."

We employers of the province are not stupid. We know what that means. With that amendment, we could go to the unions and bargain and say: "Everything is on the table. You have no minimum rights to any one of these things. The question is not whether or not you want to give up any of these rights. The question to what extent can you resist our demands that you give up these rights."

We anticipate that if these amendments were to come through, we could find some unions that would give up certain rights here — perhaps hours of work; some give up overtime and some give up vacation — and essentially throughout the province we could then have it clearly understood there are no minimum standards. They could all be gone.

Of particular note, of course, you'd be dealing with the clauses and the proposed amendments dealing with enforcement of these standards. Where a collective agreement is involved, the employment standards branch would be under no obligation to enforce the act. Let us say a union managed to resist the pressure from an employer to give up the minimum rights of vacation, hours of work, things like that. We, the employers of the province, could still go ahead and violate these rights, confident that our friends in the government or people in the employment standards branch would not intervene. You've got a collective agreement. Go and deal with that in the grievance and arbitration process. Of course, we employers well know how to play the grievance and arbitration process for endless delays and costs to the unions and the workers of the province. If we happen to lose the grievance or the arbitration, hey, there's always the next round of bargaining. We can come back again and still try and chip away at those rights.

If these proposed amendments give us employers so much edge in dealing with the unions, what greater rights would they give us with the unorganized, be it the working poor or middle class? Again, we can read the message of the proposed amendments very clearly. We

understand what you're proposing. There will be no real standards. There will be no real enforcement of the standards. We can make passing mention, for example, of proposed amendments dealing with collection, that is somebody is in a position where they actually could somehow or other try and make some claim to money owed them, that's going to be settled somewhere down the line for much less than you got. If you happen to think you have a claim for \$1,000 or so, let's realize you're probably not going to get that \$1,000. You might be lucky, when you've got a private bill collector and you've got an offer to settle, if you take \$500 out of that. Let's recognize those rights are paper rights. They're not going to be enforced. They're not going to be carried out.

The basic points I'm making are very simple. We, the employers of the province, will not tolerate any delays in lowering the standard of living of the working people of this province. Your job as members of the committee dealing with these proposed amendments is not to listen to the people of Ontario, not to listen to the injured workers' groups or the unions or the various agencies and people who come and talk to you. Your job is not to reason why; your job is to do and die. If need be, I would strongly suggest that you purge that wet, Elizabeth Witmer, from the cabinet, that you purge members of the government caucus who show any independence of spirit and thought, who show that they want to think and consider and hear what's going on, and that you go ahead and complete the agenda. Complete the revolution. Carry it out. We, the employers of the province, want you to do that. Yours is not to reason why. Thank you.

Mr Christopherson: I can't think of a question. All I can think of is a comment, and that is that I was the one who led the charge to force the minister and the government to take their act on the road. I may have to do the same with you and yours. I think you've got a great message there, and it would probably be a lot funnier if it weren't so true. I think that's an excellent way to get across a very clear message the people of Ontario need to hear. Thank's Peter.

Mr Tascona: I have no questions.

Mr Lalonde: The fact that this bill will authorize the employer to have the employees work longer hours, what impact will this have on family activities?

Mr Cassidy: I think that's a very leading question. Tremendously devastating, yes.

1520

Mr Lalonde: I'm glad to hear that.

What's your feeling about having privatization of the collection of back time, overtime, severance pay instead of the government handling it the way it is at the present time?

Mr Cassidy: That's an excellent point. Part of what I spoke on is obviously is that in privatization, which is talked of here, people end up last in their rights. What I think is also very important is that, basically speaking, we're looking at government's abandoning their role, which of course the employers of the province would prefer. The employers of the province would prefer that government not listen to any complaints, so that, for example, if the members of this committee were to pass standards on vacation or hours of work or maternity

leave, whatever, they would not have any right to enforce those standards, they would not have any responsibility of enforcing the standards either as elected representatives or through the employment standards branch of the ministry. That would mean that whatever standards the MPPs passed were irrelevant and meaningless. Basically speaking, they're now left up to private companies to enforce those, the employment standards branch, the government agents, playing a role in that.

Mr Lalonde: When I look at the past, since the government only collected 25% of what was supposed to be collected in the past, I think there should be a cap on the percentage to the company, the parent company, that would come up with an agreement to settle faster, instead of 75% that they're entitled to. You can rest assured that the companies are going to try to resolve the solution as quickly as possible.

Mr Cassidy: In my situation, I think that if you set standards there should be somebody who's keeping them. I can't imagine an employer who would say to his employees: "Here are the basic minimum standards I expect. By the way, I'm not going to bother enforcing them. If they're violated, then 75% of the time I'm not going to bother." I just can't imagine any government or any committee saying, "We're going to set standards," and then say, "We're not going to bother enforcing them."

The Chair: Thank you, Mr Cassidy. We appreciate your coming before us here this afternoon.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 546

The Chair: Our next group up is OPSEU Local 546. Good afternoon.

Ms Victoria Biocca: Good afternoon. I'm Victoria Biocca and this is Dale Moreau. We're here on behalf of our members of Local 546. For your information, our document as submitted cannot be read in full; we will skip over certain sections. You should have no trouble, however, in following along.

Ms Dale Moreau: We appreciate the opportunity to present our views on Bill 49 and the potential impact on the enforcement of employment standards in this province. As the front-line enforcers of the Employment Standards Act, we provide the public services that ensure employers comply with a minimum set of legislated standards. We believe this enforcement should be cost-effective and efficient. These activities should not restrict economic growth in the province. However, we believe these standards put non-unionized workplaces on a level playing field.

The issues surrounding amendments to the act before this committee are serious issues that will affect all working people. The act currently protects approximately 5.8 million workers in the province of Ontario. In 1994-95, the employment standards program received 700,000 inquiries regarding the act, the number of employees was assessed was about 48,000 and the dollar amount was more than \$64 million — wages not paid by employers.

These assessments were compiled by a total of 104 employment standards officers province-wide. It is

interesting to note that there exists a case backlog of more than six months in some areas. The ministry has already eliminated 34 positions in the program. The ministry also intends to terminate another 12 positions, resulting in fewer officers, less support to conduct investigations and a longer case backlog.

Regarding the employee entitlements, the changes proposed in Bill 49 are biased in favour of employers at the expense of employees. Under the current act, an officer can make a compromise settlement to a claim when both parties agree to the compromise. The proposed changes will allow a private collector to coerce the parties into a compromise settlement.

Bill 49 amends the act to allow a series of waivers. This is a key feature to this bill. Bill 49 takes what are supposed to be minimum standards and turns them into a starting point from which to begin the bartering.

The waiving of minimum standards is also proposed for employees represented under collective agreements. Bill 49 proposes to allow collective agreements to override the legal minimum standards. The proposed changes in Bill 49 will support the offenders in the areas where the employees are the most vulnerable. For example, a large corporation has asked to increase the legal hours per week. The employer offers to increase the hours of work per week from eight to 10. In exchange, the employer suggests three weeks' vacation per year instead of two weeks' vacation.

Overtime and vacation pay can be quantified. How does one quantify the damage caused by having to work longer days? How can an officer assess a non-monetary standard with a monetary standard to determine if this confers a greater right or benefit? How can one quantify the damage of having to work even longer hours than already exist and the resulting damage on personal and family lives? Bill 49 will push employees' rights back to over a century ago when politicians protested against businesses because the employees were forced to work such long days. We cannot go back to this time.

Bill 49 is proposing that any employee who commences a civil action through the courts cannot file a claim for the same issues. This would include claims for termination and severance pay if the employee has filed a suit for wrongful dismissal. This is a gross injustice to employees. Bill 49 erodes the employees' minimum rights to such a degree that they will have no alternative but to use the court system.

Bill 49 will also reduce the time limit that an employee can file a claim. Under the current act, employees have up to two years to file a complaint for any moneys owing. Under Bill 49, employees now have six months from the date of the complaint. There are very few employees who file complaints against their employer while still employed.

The Ministry of Labour stated in the expenditure reduction strategy report that by reducing the time frame to file a complaint, this would improve the turnaround time on investigating claims. This is not true. The two-year time limit is a must for employees with the high unemployment currently facing Ontario. Employees would not complain to their employers of a breach of their employment rights in fear of losing their jobs. The

ministry does not promote employment standards. Customer service is not a priority within the ministry, as evidenced by the cutting of staff, discontinuing telephone inquiry units in some areas, guides no longer being produced and, finally, eliminating the officers who would actually investigate the complaints.

Bill 49 would also give employers an outright licence to steal from their employees' paycheques. Employees who are owed moneys beyond the six-month time limitation will be forced to pursue civil legal action or drop their claim altogether. The ministry acknowledges that reducing the time limit from two years to six months will cause more activity in the provincial courts, where employees will now have to bear the costs, in addition to the public expenditure already existent.

The act does not have a ceiling on claims. Bill 49 proposes to limit the dollar amount of the claim to \$10,000. The ministry's reasoning, as noted in the report, is to lower the caseload, as higher-paid employees would use civil action to collect. The assumption must be made that when employees file claims in excess of \$10,000 they are higher-paid employees. This is not so. For amounts over the \$10,000, usually it applies to commission salespersons, violations that have accumulated over a two-year period or long-service employees who are owed termination and severance pay.

For example, a 12-year employee of a manufacturing business earning \$33,800 a year, or \$650 a week, is laid off, not given notice of the layoff. The employee's entitled to eight weeks termination pay in lieu of notice and 12 weeks severance pay, a total of 20 weeks; \$13,000 is owed under employment standards. The poverty level for a family of four in Metro is \$31,000 per year; \$33,800 a year is not a lot of money. Why would anyone assume that this particular employee is higher-paid when family size or the family's financial status is not considered in the ministry's statistics? This is absurd. Why would anyone assume that this particular higher-paid employee would pursue his or her claim through the civil courts? The employee would be forced to choose between filing a claim with the ministry for \$10,000 and forfeiting \$3,000 from his claim or retaining a lawyer, pursuing it through the courts and winding up with less than \$10,000 after a lengthy and costly civil action. This constitutes a windfall for the employer if the employee chooses the employment standards route — a licence to steal \$3,000.

In addition, the act does not have a minimum amount on claims for the violations of the act. A worker will not be able to file a claim with the ministry under the new, proposed, unannounced minimum amount. The Ministry of Labour's report sets the minimum amount at \$100. The ministry's only explanation for setting a minimum amount is to eliminate approximately 800 to 900 cases per year. This is outrageous and an extremely dangerous trend affecting 5.8 million workers only to reduce the caseload by 900. With regard to employees who handle cash, for example, every six months an employer could automatically deduct \$50 from an employee's paycheque for cash shortages — twice a year. The employer could deduct moneys under the minimum amount every six

months. It's a new double standard for the employer — an outright licence to steal.

Ms Biocca: Regarding the enforcement of the act, Bill 49 is forcing employees to use means other than the employment standards branch. Why would such an option be considered? Will cutting jobs in the branch save money? The answer to this question is no, as the alternative most likely to be pushed on to employees is the court system, a system which is already failing our society due to backlogs of cases yet to be heard. Forcing employees to use the provincial court system will only cause more problems.

In addition to the problems this will cause the system the employees will suffer unimaginable delays in getting their entitlements, and when a judgement is rendered, the collection function will still have to be addressed. This is not a proposal that will save the province any money. The branch is far more expeditious and cost-effective in enforcing the act. Any changes to the act should focus on more enforcement measures to secure the minimum standards in an even more expeditious manner.

1530

Another change which would result from Bill 49 is that unionized employees will not be able to file a claim. Unionized employees will be forced to use the grievance procedure under the collective agreement to enforce the legal rights. The proposal virtually demands that every collective agreement have the act included in it. How could such a proposal retain the consistency of decision rendered on the employment standards cases? This will cause the erosion of the minimum employment standards and it is already a minimum.

Aside from investigative and enforcement problems the union can be faced with complaints concerning fair representation by its members. Although this already occurs, when you consider the scope of adding the enforcement of the act into the grievance procedure, such complaints against unions will increase. Again, on reason for this would be inconsistency in decision rendered. This could well mean that a failure of enforcement of the act constitutes a breach of duty of fair representation. This proposal is an impossible reality. The mandate of an officer cannot be the mandate of either an employer or a union. The mandates of employers and unions are quite obvious. Whose mandate equals that of an employment standards officer? Furthermore, any determination made by an officer is subject to an appeal by either the employer or the employee. How is this right of appeal preserved through Bill 49? How is any right of a unionized employee preserved through Bill 49?

Regarding the proposed changes to enforcement, any attempt to empower others to enforce the act will result in a breakdown of the minimum standards. This would inevitably occur as consistency in decisions cannot be maintained when so many different parties, all with different mandates, are making the decisions. Why would an employer adhere to the standards when there is no consistency and cases are thrown out? The minimum standards of employment cannot in any way be eroded. "An employment standard shall be deemed a minimum requirement only." This is the law and it must be enforced.

The next item of review is the proposal to use private collectors. For informational purposes, the branch did give its own collections unit, but for a short period of time. The unit had been formalized about 1990 and was disbanded in March 1993. The collections unit history of collections is illustrated. The ideal solution regarding collections of employment standards is to reinstitute this unit. This would result in a more efficient and expeditious finalization to a file. The arguments in favour of an internal unit far outweigh any other proposal, whether collections be done by an officer or a private agency.

As it is today, the employment standards officer is responsible for collections. Every claim and file is in essence a collection file. In 1994-95, out of 9,468 assessments, only 2,771, or 29%, went uncollected. Therefore, 71% was collected. Of the 2,771 uncollected assessments, 1,035, or 11%, were due to the employer's refusal to pay. However, most of the time these files are collected through payments made on orders to pay and this collection is not recorded. Furthermore, on the files where the orders were not paid, this is not to say this is still uncollected.

In addition to this argument, when you consider the assessments uncollected of 2,771, and 1,035 is explained by employer refusal, the remaining 1,736 assessments are due to bankruptcies and insolvencies. These are the largest dollar assessments. How will a private collector or any other body collect from an insolvent corporation? "You can't get blood from a stone" is the most obvious statement heard by an officer when investigating these files. Therefore, when the numbers are reviewed, the number of insolvencies that have occurred over that time period must be considered separately, as these files constitute the highest dollar figures and the lowest collection possibility, if any at all. In these cases, if the officer has not collected any moneys, then the use of a private collector will be fruitless.

The focus of any review of these numbers must be the higher number of insolvencies and that these files represent the largest assessments of uncollectible moneys. When this is considered, the figures support that the officers are very effective in the enforcement and the collection functions. Nevertheless, Bill 49 proposes to give the collection function to a private collector. This proposal has many flaws.

One is that if the money collected is less than the amount owing, this amount can be apportioned among the collector, the employee and the branch. This is a serious problem, as we are already dealing with a minimum standard. The employment standards is a minimum only. To allow less money to be collected is a violation of this section. The act is defining a minimum standard and then reduces the minimum further. The employees cannot be expected to accept any less than their full entitlement as assessed by an officer.

It should be noted that the officers have a high success rate of collection at 71%. When you consider the other 11% that may be collected and is unreported, the success rate is even higher. The other 18% are insolvencies which represent the highest dollar assessments and are virtually uncollectible by any body or any organization.

In conclusion, our main concern is the impact Bill 49 will have on the vulnerable worker. The regular wage earner will not be at these hearings. They are too concerned in earning a day's wages to support their families.

Our second concern is that the bill is to promote self-compliance. In today's society people are more prone to challenge a law than to abide by it. Society has become less respectful of laws. As a result, Bill 49 must be reviewed and, as previously mentioned, changes should focus on more enforcement measures and strengthening the Employment Standards Act.

The Chair: Thank you. We only have a couple of seconds left. I'll allow a brief statement or comment by each of the parties, starting this time with the official opposition.

Mr Hoy: Thank you very much for your presentation. You mentioned the \$50 deducted from one's cheque. In the paragraph prior to that —

The Chair: Forgive me. I had put a checkmark beside it. It should have been the government that started the round. I'll let Mr Christopherson finish. You go first and then I'll have John make his statement.

Mr Hoy: So you're going to let me —

The Chair: Yes. My apologies. Keep going. You're in the middle of your question, which I've interrupted.

Mr Hoy: Okay. You mentioned the \$50 taken off a cheque, and the minimum amount in a government report was \$100; it suggested that it be \$100 for what we'll call frivolous claims. The reason given was to eliminate approximately 800 to 900 cases per year. What dollar value was assigned to those 800 or 900 cases? They wouldn't all be \$100. Do you know what range?

Ms Moreau: I have no idea. It came out of the ministry's expenditure reduction strategy report. Where they arrived at the 800 to 900 cases, I have no idea.

Mr Hoy: So they could have been in excess of \$100?

Ms Moreau: It could have been in excess of \$100.

Mr Baird: Thank you very much for your presentation. We certainly appreciate it. I do feel it incumbent upon me though to put on the record that of \$64 million that was assessed last year, only \$16 million was collected, and that the idea for re-establishing a cap was one that came out of a special Employment Standards Act review committee on which half the members were employment standards officers. Your colleagues were the ones who recommended we do this last fall. I think it's important to put that on the record in addition to the fact that I guess we feel we've got to do a better job than that 25%.

I don't point fingers on the 25%; the 25% was roughly the same amount before the collections division was disbanded. It went down and then it went up again to 25%. I just think we've got to do better. The policies are probably just as much to blame as anything, not necessarily the people. So I guess we just feel we've got to try to do a better job than that, seeing we couldn't do much worse.

1540

Mr Christopherson: Let me say to the presenters that I think what they may have just finished doing is presenting arguably the most powerful and important brief we may receive in terms of casting some real light on the

implications of Bill 49 from the real experts in the field. I want on the record to say how much of a positive contribution I think this makes to our procedures and that I'm confident there will not be any repercussions for these workers in terms of coming forward and stating what they have today on behalf of their colleagues. I can assure the presenters that we will be monitoring that confidence I've expressed very carefully. Thank you on behalf of the workers of Ontario.

Mr Baird: On a point of personal privilege, Mr Chair: I would just concur with the member for Hamilton Centre without any hesitation, on exclusively the last part of his remarks.

The Chair: Thank you, and we appreciate you taking the time to make a presentation before us here today.

PROVINCIAL COUNCIL OF WOMEN OF ONTARIO

The Chair: With that, our next group up is the Provincial Council of Women of Ontario. Good afternoon. As I'm sure you've heard me say to the last group, we have 15 minutes for you to divide as you see fit between presentation time or question and answers.

Ms Phyllis Kerkhoven: I'm Phyllis Kerkhoven. I chair the economics committee for the Provincial Council of Women of Ontario. I would like to compliment the last group. They had the numbers and the information that we were not able to get, so ours is a more general presentation.

The Provincial Council of Women represents over 80,000 persons in Ontario through our local councils, federated societies, affiliated groups and individual members. The council of women is a non-sectarian federation of organizations of women and of men and women. These organizations have fundamental principles that are in harmony with the avowed aims of the council of women: "...to work for the betterment of conditions pertaining to the family and the state." The motto of the council of women is: "Do unto others as ye would that they should do unto you." We've been around 100 years. Those are the exact words.

Our membership includes many different types of organizations, from church groups to ethnic groups to business groups and educational groups. We welcome this opportunity to respond to the standing committee on resources development regarding the Employment Standards Act.

The Provincial Council of Women of Ontario is concerned that a fundamental piece of legislation which sets out vital minimum standards for all employees in the province of Ontario is being amended in what appears to be a reduction in these minimum standards. In section 3 of the current act, "No employer, employee, employers' organization or employees' organization shall contract out of or waive any employment standard, and any such contracting out or waiver is null and void."

You have something in section 4 that says you can do things but they have to be better than what the minimum standard says. You seem to have created a conundrum here.

Limits have been set on the amount an employee can claim which, taking into account today's wages, would appear to be inadequate. The time frame whereby an employee can initiate a complaint has been shortened. Should the employee be successful in his or her claim this amount will be collected by a collector, which would reduce the moneys ultimately received by the employee. Also, if the employee is not represented by a union or other group, he or she must pay all costs of the investigation. When we look at the fact that the employee is probably no longer employed and does not have the financial resources to initiate an investigation, we foresee that many justified actions will not be taken.

This legislation was initiated to protect employees and offer minimum standards which would be adhered to by all employers. Roadblocks are now being erected which many employees will not be able to surmount. The proposed amendments appear to be ambiguous and unclear to the average person. Should an employee wish to follow through on his or her concern, an expert will have to be retained and paid for by the employee. This cost will also be deducted from any award the employee might receive.

We are concerned that compromise agreements can be made by unions and employers which do not take into account the fundamental principles of the legislation which states that employment standards cannot be waived.

All in all, we feel that the protection offered by the Employment Standards Act is being amended and the amendments are not in the best interests of the citizens of Ontario.

The Chair: Thank you. That leaves us plenty of time for questions. This time we'll start with the official opposition and we have three and a quarter minutes per caucus.

Mr Hoy: Thank you very much for your presentation. I do note that you have men in your organizations but I would say that you primarily are representing the women. Correct?

Ms Kerkhoven: Yes. Some of our affiliated groups are men and women.

Mr Hoy: Over yesterday and today we've heard about the lack of protection this bill would give to particularly women because of their workplace, the type of work they do and oftentimes not organized or unionized, and other vulnerable persons. So I appreciate the comments that you've made here.

The service sector is one that people believe is going to grow, and in the food or agrifood business I happen to believe that's true as well. In that sector many people are not organized or unionized and I believe, although statistically I don't have the figures, many of them are women. Would you agree that the service industry, if it is to balloon, as people think it will, first of all has many women and they would be subjected to vulnerability under this act?

Ms Kerkhoven: Yes, I would. You also have to realize that these people are probably not used to making things like presentations. Their use of the language might not be quite as good as ours and they'll have a real problem.

Mr Hoy: I have no other questions.

Mr Christopherson: I had a chance to read your presentation while the official opposition was making its comments. In light of the organization that you represent, do you agree with some of the presentations we had in Toronto yesterday that in many cases people who have no other rights except those contained in the Employment Standards Act are new Canadians, visible minorities, the majority of them being women? Certainly we saw a disproportionate impact of Bill 7 so far, which is the new Ontario Labour Relations Act the government rammed through the House, where a lot of the cleaners in Ontario have lost their union agreements and their wages have been slashed by 30%, 40%, 50%, and their benefits, and a disproportionate number of women were impacted as a result of that. Do you agree that this is a likely outcome of reducing the minimum standards contained in the Employment Standards Act?

Ms Kerkhoven: Yes, we do definitely, and we're not just looking at the actual person employed. This is going to affect the whole family because that wage is not coming in. It's the whole picture that we find very depressing.

Mr Christopherson: I think it also needs to be said that we can't talk about this in isolation. When our caucus looks at all the measures of this government, the cuts and the decisions they've made about where they will cut, overall there has been an increasingly disproportionate, negative impact on women and children. I hope that your council would continue to articulate that reality because it's an important part of the public debate that needs to happen over the next few years. I thank you for the work you're doing.

Ms Kerkhoven: Thank you. We intend to.

Mrs Fisher: I appreciate your attendance here this afternoon. I think you're especially right when you say that often individuals won't come forward because they're afraid to speak.

We had the experience yesterday afternoon in Toronto, however, to have a woman present on her behalf, along with another woman, each having the same cause — unpaid wages owed to them — whereby for the past number of months, as a matter of fact over a year, the process that was in place by government wasn't meeting their needs. They were unable to collect. It was a very impassioned plea by an individual for us to listen up and it was also inherently expressing that perhaps government doesn't have to do everything, be everything such that somebody can be protected. As a matter of fact, in her case it was interfering with her ability to recover her funds.

We had a presentation made just previously with some statistics that were there for 1990 to 1993, and for whatever reason that collection agency was then dissolved, but we also know that more recent statistics indicated that we were able to recover only 25% of the funds on behalf of employees in the last year. Do you think there's room to try, for those people who don't have that representative group on their behalf, perhaps the private collection system where the success rate might be improved?

1550

Ms Kerkhoven: It sounds good, but the employee or the person trying to collect is not going to collect the full amount he or she supposedly would have gotten; it's going to keep reducing and reducing. If there was something in the amendments to bump up the thing for the costs of collection and then start the process of reducing, whatever, that would make much more sense.

Mrs Fisher: I just have one comment to make to that: It says a possible reduction to 75%. Some people will have you believe, as has been stressed for the last two days of these hearings, that this will be the rate all of a sudden. I'm not so sure we should all be so naïve as to believe that will be the rate. Perhaps it will collect 100%, perhaps it will collect something less than that, but not less than 75%.

In the case of this woman, she had no access to any of it. She'd have been grateful to see 25% of it and hasn't been successful, while waiting for her three kids to be fed. I'm not so sure, given our history, that we're doing anybody a favour by not trying something different or something new. When she was in Toronto yesterday she very passionately asked for our support and in essence was saying: "Get it out of your hands. You're not doing a good job on my behalf. Please, somebody, help."

I don't know. As a woman it struck me that perhaps we were where we didn't belong and we should be giving some other option a chance to be tried.

Ms Kerkhoven: Then maybe humans should be considered like in manufacturing: They're an object rather than a service. When you buy materials you must pay for them. This is the same type of thing, and there's no reduction to 75%. If you owe, you owe, plus interest.

Mrs Fisher: I'm not saying the moneys weren't owed to her; I know that. I'm saying that anything that had been done on her behalf to that point wasn't successful. Basically she was saying that we as government were in her way as well because we were unable to do for her what she needed. It seems to me like that's not an unusual situation.

She was brave enough to come forward as an individual to present the case. Many haven't. Many do it in groups, and there's nothing wrong with that as well; I think we have to hear from everybody, but if we had more of those individuals step up to the table, which does take some fortitude that a lot of people lack, perhaps the reality of the problem would be more obvious. I just thought I'd ask the question.

Ms Kerkhoven: We were primarily concerned there would be more people who would not come forward because it would not be worth their while at all.

The Chair: Thank you very much for taking the time to come before us to make a presentation today. We appreciate it.

NORMA LAFORME

The Chair: The next individual is Norma LaForme. Good afternoon. That helps us get back on schedule, in fact even slightly ahead of schedule. As you've heard me say, we have 15 minutes for you to divide as you see fit between presentation time and question-and-answer.

Ms Norma LaForme: Thank you. Just a bit of background about who I am: I live in Hamilton and for the past two years I've been working part-time for an organization in Hamilton dealing with disability issues. I've been active in the community, advocating for rights of people with disabilities as well as other people I see as vulnerable. Basically I give my two cents in. I believe it's important to tell people what you think and what you believe.

I would like to thank the standing committee for granting me this time slot at these proceedings. I have requested to be here today because I am concerned with Bill 49 and how it will affect people with disabilities in Ontario.

As I read notes on Bill 49, I considered what will happen with the new bargaining rights that employers will have in Ontario. For instance, what if a person with a disability has a job where the union is negotiating with the employer that the people will work longer hours per day for more vacation time. If a worker with a disability must keep a fixed schedule and is unable to work the extra hours, this would have an adverse effect on the person's health and he or she may need to refuse. What will stop employers from firing a worker with a disability so they can hire a worker who could work longer hours? I would question any employers who want their workers to work longer hours, because this would be more stressful on the workers and, as a result, employers may have more problems with absenteeism. People with disabilities want to work so much that they may agree to employment conditions that may affect their health or put them at risk.

Another concern about changes in employment standards is the new time limit that workers have to complain about a violation. Presently workers have up to two years to complain about an incident, and workers tend to complain after they have found new employment. If you make workers launch a complaint within six months, they may face harassment and/or job loss at the hands of the employer. Workers with disabilities may not complain, as they fear losing their jobs, as well as the fact that it is still difficult for workers with disabilities to find jobs due to the discrimination they already face in our society.

If people do not complain about human rights violations, they may be working in conditions that are hazardous to their health or they may be taken advantage of by working longer hours for less pay. Shortening the time that workers have to complain will make it possible for employers to abuse their workers. When the person does make a complaint, the ministry has two years to investigate and the employer will have two years to pay the worker. So not only does the worker have the stress of applying to the employment standards for unacceptable conditions; they may also have to wait up to four years for their settlement. Tell me, where is the justice in these changes to the Employment Standards Act?

The new \$10,000 maximum cap under the Employment Standards Act will make it even more difficult for employees to receive all the moneys they are owed. If workers are owed more than \$10,000, they may have to obtain a lawyer. Workers may also need a lawyer if the amount they are owed is under the minimum cap.

Workers who have a disability may be too intimidated to go to a lawyer because they cannot afford the legal bill and then cannot access help from legal aid for employment-related issues. If the worker does go to a lawyer, they may be intimidated because of the power imbalance between themselves as workers and the employer. A worker who cannot afford to lose the money they are owed may give up on fighting for their money because of these changes.

The Ministry of Labour should continue to be the mediator in all employment standards complaints to ensure that there is a mediator between the worker and the employer. These cases should not be in our backlog of the court system where the courts may not know a lot of the details about the employment standards. This is not justice; it is the Ministry of Labour not doing its job as a mediator.

1600

Under the new Bill 49, if the situation can be resolved through the courts, the ministry will not investigate the claims. The problem with this is that employers who have frequent employment standards violations will not be on record with the Ministry of Labour. If this happens, workers will find it difficult to prove a history of abuse of employment standards by the employers, which in turn will make it difficult to tackle a problem systematically.

Another issue is that workers will have to decide between taking the person to court or filing with the ministry. If the person needs a lawyer to explain the difference to them, this may cost the worker a great deal of money before they even decide the best course of action. If the worker has a disability, they may not have that money to spare and this will likely be another barrier to the person filing a complaint with employment standards. We live in a society where all people are supposed to be free from abuse. However, if employers are given a ticket to do whatever they wish, workers are going to suffer from abuse by employers.

Bill 49 allows the government to use private collection agencies to settle the dispute between workers and employers. The problem with this system is that collection agencies will likely push people to reach fast settlements without getting all the money they are entitled to. As a result, employers will pay the workers only a fraction of what they are owed and employers will once again get away with not paying their workers all the money that they owe people. I want to know, what type of justice is there where dishonest employers will not have to pay their workers all the money they are owed, all because some people want quick settlements? The Employment Standards Act is supposed to prevent the abuse of employees, not add to the abuse of employees.

Finally, the section of Bill 49 around negotiating employment standards in a collective agreement is not an effective way to go. If Bill 49 is passed, employers and unions will negotiate hours of work, public holidays, overtime and severance pay that may be lower than the standards. This relates to my first point I made, that if people are forced to work longer hours for less pay, their quality of life will decrease and their stress level will increase. This will lead to more accidents in the workplace, more careless work practices and a less equitable

society. All of this relates to workers with disabilities, because less equity in our society leads to fewer opportunities for people with disabilities to become fully employed. Employment standards means that there is one standard for everyone; it does not mean having standards that are on a sliding scale and what is good for one person is not good for someone else.

As a person with a disability, I am concerned because I have a university education, experience working with people, experience working with different issues, and yet I have not been able to secure a full-time permanent job. I look at my friends and family who have worked most of their lives and now have money to travel and enjoy life and I wonder if I will have half as much as they do when I am their age.

I want to work, but I want to work for people who will be fair and equitable. Bill 49 does not encourage business practices that are fair and equitable, and I hope this bill is not passed. Employment standards should be strengthened, not watered down. Winston Churchill once said, "One can judge a society by how they treat their most vulnerable people." Our society should be creating opportunities for all people by ensuring that employment standards protect workers from harassment and give them working conditions that are fair and equitable. Workers with disabilities need strong employment standards so they will have equal opportunities in the workforce.

The Chair: Thank you. You've left us about a minute and a half, so 30 seconds per caucus. This time we'll start with Mr Christopherson.

Mr Christopherson: I don't mind starting, but I think your rotation is off again.

The Chair: Forgive me. When we dropped the —

Mr Christopherson: Oh no, it would be because we dropped the last one.

The Chair: That's right.

Mr Christopherson: My apologies.

The Chair: We're even now.

Mr Christopherson: You're right, we are.

I just want to say for the benefit of members of the committee that Norma is a well-known and highly respected representative of people with disabilities in this community and I don't think I need to say much to convey the fact that I think it takes that much extra to come forward when we know how difficult it is for able-bodied persons to come forward. This can be a rather difficult, stressful process to go through and Norma is there every time there is a public community issue here in Hamilton. I know that you would all want me to thank her for continuing to show the courage and leadership that she does on issues that affect the disabled in our community. Thank you, Norma.

Mr Baird: I just would echo the comments of the member for Hamilton Centre. We appreciate your discussion here today and we'll certainly take your brief back with us and keep it in mind in our deliberations. We appreciate the time you obviously took to research and prepare your brief. Thank you very much.

Mr Hoy: I also want to thank you for your brief. You mentioned quality of life. Those institutions such as government must provide equally for people and those

who are considered to be vulnerable but no less active, as you are. Thank you.

1610

Ms LaForme: I just want to comment. I think quality of life is partly the concern of the government, but as a society of people in community working together, we need to work together to ensure — we live in one of the richest countries in the world. Our quality of life should be going up or staying at the same peak where it has been for the past few years. It shouldn't be going down.

The Chair: Thank you, Ms LaForme. I think all the party members would agree, it's certainly our goal to exploit the advantages of living in the greatest province and the greatest country in the world. Thank you for adding a very different perspective to our deliberations here today.

CANADIAN UNION OF PUBLIC EMPLOYEES NIAGARA DISTRICT COUNCIL

The Chair: The next presentation will come from the Canadian Union of Public Employees, the Niagara district council. Good afternoon.

Mr Pasquale Perri: Good afternoon. I thank the committee for allowing us the time period. I am Pasquale Perri. I am the president of the Niagara district council of the Canadian Union of Public Employees. It's a voluntary group — unpaid — elected to represent over 6,000 CUPE members in 15 locals throughout the Niagara Peninsula.

We are workers who care for the sick, the elderly and the children. We clean and repair your roads, pick up the garbage and work in sewage and water treatment plants. We clean your schools, look after the students, take care of the mentally and physically handicapped and provide child protection services. We administer the terms of the provincial welfare act and the Workers' Compensation Act. We help run the hospitals, the senior citizens' homes, the libraries, humane societies and sexual assault centres.

Our jobs demand a minimum of 35 to 40 hours per week to fulfil our employment responsibilities. Then we volunteer our time and energy to represent the members of CUPE.

It is stated that the Employment Standards Act applies to every contract of employment, oral or written, expressed or implied. It is stated the Employment Standards Act shall be deemed to be a minimum requirement only.

Just as an employer has obligations to his workers, so does a worker have obligations to his employer, so does the worker have obligations to his employer. This legislation should protect those who cannot protect themselves. This is our understanding of why the Employment Standards Act was created. To dilute this act is morally unjust to every worker in the province of Ontario.

To propose amendments under the assumption that all workers in Ontario can read, write and communicate to the extent which is now expected under these amendments does not accurately reflect the current workforce, whose skills and abilities have not been considered. The emotional and financial stress a worker faces with the proposed time constraints in applying for financial redress

will be devastating. Just to show what some of the workers in the workplace have to face, there are a lot of functionally illiterate people in the workplace and there are also people who aren't. In some cases, workers will be dismissed without any income. In other scenarios the workers will still be working for the employer, more than likely unaware of what options are available to them or unaware of the fact that the clock is ticking.

Should a worker be successful in obtaining redress, he or she will be facing the distinct possibility of losing an unknown percentage, maybe as high as 40%, of any moneys awarded to a third-party collector. Is this fair? Is this just? I see a few people shaking their heads. I have worked as a collection agent.

Who does the worker turn to? Prior to these proposals, the provincial government, through its employment standards officers, was responsible for policing the act. Under the proposed changes, this duty is being forced on the unions and trade unions and the ordinary worker. What about the new workers, the student workers, the illiterate workers, the English-as-a-second-language workers and those workers who barely meet the standard set for literacy? Who is responsible for them? Is this fair? Is this just? Is this in the true spirit of the Employment Standards Act?

The worker is now facing the distinct possibility of losing the right to file both a civil complaint and an employment standards complaint. This is a right the workers of Ontario have possessed for many, many years. Why the change? Who benefits? Is this streamlining for the worker, the employer or the government?

These are some of our concerns. There are many other concerns. However, we anticipate these will be addressed by other presenters.

For a housekeeping act, these amendments go far beyond dotting the i's, crossing the t's and clarifying any ambiguous language. When you decrease the time limits, minimize the maximum benefits and declare a complaint must be filed in a specific manner or it will be deemed unacceptable, this is not housekeeping.

To try to delude workers into believing this is an improvement act is an insult to workers throughout the province. If the government were to follow the true spirit of the Employment Standards Act, it would recommend the following amendments: that a worker have five years to claim redress as financial institutions have five years to collect overdue debts, give or take a year or so; no maximum monetary ceiling on claims by workers; that a complaint filed under the act will be accepted in person, verbally, written, faxed, electronic data send, by telephone or in the first language of the worker; that a worker may pursue both his or her employment standards and civil remedies at the same time.

It is our belief that the present Employment Standards Act protects all workers, both union and non-union. Any changes that limit the ability of workers to exercise rights to redress, both in time limits and amount of moneys owing, is an attack on all workers in Ontario.

To unload the responsibility of policing the act on untrained union workers is a direct contravention of the government's responsibility. Based on changes proposed, it is our opinion that the government has abdicated its

responsibilities to workers in Ontario. With no teeth in the act to assist those who will handle the government's unwanted duties, any measure of success will meet with limited results.

This act was intended to solve problems in the workplace without undue hardship to the worker. The proposed amendments reverse the process and penalize the worker. We must remember the employer has purchased the services of the worker. When the services are not paid for, this is a direct violation of the Employment Standards Act.

The Niagara District Council of the Canadian Union of Public Employees strongly opposes the proposed housekeeping amendments in Bill 49, An Act to improve the Employment Standards Act.

The Chair: Thank you, Mr Perri. You've left us about two and a half minutes per caucus. This time the questioning will start with the government benches, and I believe Mr Ouellette was the first to put his hand up.

Mr Jerry J. Ouellette (Oshawa): Thank you for your presentation. I'd like to get into some more detail about the collections process. Currently 60% of the individual pays without an order, which means that 40% require an order or something to take place. Of that, 37% are just refusals to pay. What we're looking at here is paying up to 75%; the recipient, the employee, would receive 75%. Remember — I'm sure the figures are bouncing around they're just as confusing for you as they are for me — we're averaging 25 cents on the dollar. The employee is guaranteed 75 cents, and the collection agency can then bargain on the remaining 25 cents on the dollar. Being as it's not working now, we're not collecting 100%, how would you see us being able to improve that ratio?

Mr Perri: Number one, if there was language in the legislation that forced the employer. What I see here and what we've gone through in all of our debates is, when you allow an employer not to pay and then you tell the employee that he can collect up to 75% —

Mr Ouellette: That's taking place now.

1620

Mr Perri: Hang on a second here — you're penalizing the worker. Now you're saying to us, "How do we improve collecting that 75%?" Well, I'm sorry. As a worker I went in and we've been told — and I've done some grievances and everything, and they always tell us, "You were hired and without signing a contract you have guaranteed us 40 hours a week," if that's what your work period is, or if it's 35 hours a week. "You have signed this agreement with us, written or verbal. That's what you've done."

If I start abusing things where I'm not in at work and everything, I'm fired or disciplined. But as a worker, if my employer doesn't pay me and I go through an employment standards procedure complaint, if the employer doesn't want to pay me, now you're telling me I can take 75 cents on the dollar and say thank you very much. Where's the justice here? Now you're asking me how to improve the increased collecting of the debt.

Mr Ouellette: No, what I'm saying is that —

Mr Perri: But you're asking how to improve it.

Mr Ouellette: Right.

Mr Perri: Why should I accept 75%? To improve it so that once an employer is fined under the act and he owes that claimant \$100, he has to pay that \$100. There's no wavering on how much you'll accept. You owe us \$100; give it to us. That's why I said there's no teeth in the legislation to police the act.

Mr Ouellette: The legislation is not working the way it is. We're making here a serious attempt at rectifying the situation.

Mr Perri: If the employer owes me \$100 and the employment standards officer says, "You owe him \$100," he gets that \$100, not 75 cents.

Mr Ouellette: That's right.

Mr Perri: Then why are we here?

Mr Ouellette: That's right. It says that now.

Mr Perri: Then why aren't we collecting it? There is no teeth in there. I'm sorry. When there are other things —

Mr Ouellette: Obviously the former government wasn't able to do it.

Mr Perri: Listen, folks, we're not here to complain about the other government. We're not here for the other government.

The Chair: We're going to move on to the official opposition.

Mr Lalonde: You seem to be concerned about the collection agency. You've just said yourself that you are in the collection —

Mr Perri: I was.

Mr Lalonde: What was the fee at the time that you were in the collection business?

Mr Perri: It could be as high as 50%. It's what you negotiate.

Mr Lalonde: What was the percentage?

Mr Perri: Remember, when I call you and I say to you, "You owe this company X amount of dollars" — let's say you owe them \$28,000 — over the phone I could say, "Give us \$14,000 and we'll resolve it," and most companies will write off the other \$14,000 as a loss. Now I can negotiate with that company how much I want to collect the money for. So it all depends. But the point is, why as a worker do I have to negotiate for the money that's owed to me?

Mr Lalonde: I do understand your concern on this one because there is no cap on the percentage, except we guarantee 75%. But if there's a settlement under the amount that is owed by the employer to the employee, we're not talking of a percentage.

Mr Perri: Yes, but you're still eliminating the employer's responsibility. I'm sorry. No matter how we talk, we still eliminate the employer's responsibility.

Mr Lalonde: What other avenue do you think the government should take to ensure that the employees are getting their fair share?

Mr Perri: Strengthen the act, not dilute it.

Mr Lalonde: The actual ones?

Mr Perri: Everything.

Mr Christopherson: Thank you for your presentation. You raised a question rhetorically, on page 3, stating that: "The worker is now facing the distinct possibility of losing the right to file both a civil complaint and an employment standards complaint. This is a right the

workers of Ontario have possessed for many, many years. Why the change? Who benefits? Is this streamlining for the worker, the employer or the government?"

Can I just press a little bit and ask what you think the answer to that question is, when you look at this?

Mr Perri: It's not the worker who's going to benefit.

Mr Christopherson: Why?

Mr Perri: Because there are time restraints, the whole works. The only person who's going to benefit, no matter what — and what really irks me the most is that if I don't live up to my obligation to a contract, no matter if it's verbal or not, I can get fired. If the employer does not live up to the obligation and there are moneys involved, I have to go to court and I have to pay my own fees now. On \$100, how much does it cost to have a lawyer go in there for you?

How many of you here can live for four years without a job if you're fired without just cause? How many can? With today's economy, where you can't find a job, how long do you think you're going to survive for four years — a case I think is on an average four years before you can get your job back if you can prove you were unjustly fired. How many here can survive? That's the question.

The most important issue here, we have 22% to 35% of the workforce in Ontario who are illiterate. There are facts from the federal government, from all provincial levels. These are the people who are going to be affected the most.

You always want to know personal things. I didn't learn about an act until I was injured at work. I didn't know about the Employment Standards Act until I was 30. Now you're going to tell me students coming out of high school, where there are no programs in the schools at all that teach government law, even about the Small Claims Courts and everything — you're going to tell me these kids that are coming into the workforce are going to know what they're going to do and what they're legally allowed under the law? Let's get serious here, folks: They're not. That's the issue.

We're getting screwed as workers. The workers do not benefit from any of the amendments that you've put in here. The worker is suffering. I got hit in the 1970s with price controls. I got hit with the social contract. What have I done wrong as a worker? I contracted to work 40 hours a week, and now you're going to tell me to privatize and I have to negotiate for my same job five years from now and work at half the rate? What kind of standards are you talking about? Thank you.

The Chair: Thank you, Mr Perri.

Mr O'Toole: On a point of order, Mr Chair: I want a clarification, if I may through the Chair or through the clerk. There has been much discussion on the issue of the collection fee. It's my understanding, and I'd like a clarification, under section 28 of the act, which defines "collector," it's clear to me that the director shall assign a fee or amount for the collection, which shall be added —

Mr Christopherson: Point of order.

Mr O'Toole: This point is not being completely understood by the public.

Mr Christopherson: Point of order.

The Chair: We already have a point of order on the floor.

Mr O'Toole: That amount is in excess, and that's what I want the clarification on. The current proposals state, and the public should understand, that if the salaries and wages owed —

Mr Christopherson: Point of order. He can't go on forever. Come on, Chair, point of order.

Mr O'Toole: I am on a point of order. Under section 28, Mr Christopherson —

The Chair: Mr O'Toole, what you've raised is not a point of order.

Mr O'Toole: A point of information.

The Chair: There's no such thing. But we'll ask the research staff to ensure that by tomorrow we have the answer to your question.

Mr Christopherson: A further point of order then.

The Chair: Yes, Mr Christopherson.

Mr Christopherson: If you're going to entertain a whole lot of questions on what we have here and what interpretations are, then I'd like to know how much time you're going to allow for that and when it'll happen, because I've got a whole lot I wouldn't mind asking the government or the researcher.

The Chair: Mr Christopherson, you're far more experienced in sitting in committee than some of the newer members, and Mr O'Toole now knows that that sort of thing is not a point of order. Presumably those debates will be held when we do the clause-by-clause.

Mr Christopherson: Mr O'Toole's action is not what surprises me. It's the ruling you made that you're going to direct the research officer to respond to it. That's my point of order. If you're going to leave that direction in place, then I've got a whole lot of questions that I'd like to have the research officer look at and we'll deal with in committee too. I'm suggesting to you the whole thing's out of order.

The Chair: It's quite appropriate for you, in a written format, to send a request to the research assistant for clarification.

Mr Christopherson: And you're going to deal with it in committee time?

The Chair: No. I don't understand why you don't understand I have told Mr O'Toole he did not have a point of order, period.

Mr Christopherson: All right. Then I just need to be clear. You're not giving time for that to be dealt with.

The Chair: No.

Mr Christopherson: You're asking him that he write —

The Chair: No, no, no. I said in writing.

Mr Christopherson: He can write whatever he wants to anybody. That's fine.

SIMCOE AND DISTRICT LABOUR COUNCIL

The Chair: That takes us to our last group, the Simcoe and District Labour Council. Good afternoon. Again, we have 15 minutes for you to use as you see fit, if you'd be kind enough to introduce yourselves for the Hansard reporter, please.

Mr Herman Plas: Thank you for allowing us the opportunity to make this presentation on behalf of the

Simcoe and District Labour Council on the proposed amendments to the Employment Standards Act. At this point I want to recognize the work of Denise Earle, labour activist, for helping us prepare this presentation.

My name is Herman Plas. I'm the recording secretary for the Simcoe and District Labour Council. The Simcoe and District Labour Council has got a 40-year history being active in the community and speaking on behalf of working people in the Simcoe area. I've been a labour activist for a number of years and I plan to continue to work for social and economic justice for working people.

We believe that the proposed amendments to the Employment Standards Act, Bill 49, will have a significant impact on all the people of Ontario, not just working people. Specifically, we believe that lowering the employment standards legislation will have a negative impact on workers and on people in general.

1630

With the indulgence of this committee, I have invited Ms Kim Shalay, a health care professional, to participate in this presentation. Kim has agreed to answer questions. I will pose to her, following which I will make a brief closing summary. We welcome comments and questions from this committee following our presentation.

We hope to bring to light some of the changes that have taken place in Kim's workplace due to cuts in health care funding. We will also make the connection between these funding cuts and the negative impact of Bill 49 on the quality of care for older people living in nursing homes in this province.

Kim, I want to thank you for volunteering to help me with this presentation. My first question to you is, how do we know each other and what is our relationship?

Ms Kim Shalay: Yes, we know each other. I am your daughter and you are my father. I'm your youngest daughter.

Mr Plas: Right. You are right, we are father and daughter. Now that we've established that fact, let me ask, for the benefit of this hearing, what do you do for a living, how long have you been doing this and why do you do this kind of work?

Ms Shalay: I'm a registered health care aide and work in an accredited nursing home in Simcoe, Ontario. I've been a registered health care aide for about four years. I like my job. I like the people. I enjoy taking care of people and I am good at taking care of people.

Mr Plas: Right. How has your job changed in the last year or so?

Ms Shalay: We care for about 80 people in our nursing home. Because of staff cutbacks, I do not have enough time to care for my patients the way I should be able to. Because of staff cutbacks, I often have to do things alone that should be done by two people, such as lifting a patient. Because there is nobody to help me, too often patients do not get the care they need.

Mr Plas: How severe are the cuts in staffing and how has that affected you?

Ms Shalay: In a 24-hour period there were 12 full-time staff and two part-time staff approximately, 112 hours of nursing care per 24-hour day. This allowed us to give the needed care to every patient and we were able to do our job safely and efficiently. I used to work 40 to 45

hours every two weeks as a part-timer. Now I work 20 to 24 hours every two weeks. Now we have eight full-time staff plus five part-time staff per day, for a total of 90 hours of nursing care per 24-hour day. This is a reduction of more than 20% in hours of care given to patients in a chronic care facility.

Mr Plas: How does the cut in staffing affect your patients, and what do you see as a result of these cutbacks?

Ms Shalay: The quality of care has gone down considerably, which is to be expected with the cuts in the hours worked. Too often patients are left on their own without prompt attention, sometimes with disastrous results. Patients will attempt to do things for themselves and run the risk of injury. We had one patient who fell trying to transfer herself. She broke a hip and was taken over to the hospital. After a week in the hospital she died. Our patients are elderly people who need personal care, a listening ear, to be touched sometimes. Some patients have nobody in the outside world. The staff is the only human contact they have. I can make a real difference in the lives of some of these people by spending just a little bit of time with them, but I don't have the time any more. With the cutbacks, I have to rush to get everyone looked after.

Mr Plas: How do these patients respond to these changes in care?

Ms Shalay: Some patients understand what is going on. They know we are doing our best. Some patients complain to their families about the drop in care. Some patients are confused. They have even more trouble coping than before. These are the people who really suffer. They are the victims of these cutbacks.

Mr Plas: Do you see a change in the kind of patient entering the nursing home?

Ms Shalay: Yes. I notice the increase in the number of chronic care patients coming in. They seem to have stayed home as long as they possibly can and now they're forced into a nursing home. They need an even greater level of care, adding to a greater workload for the nursing staff.

Mr Plas: How will this kind of cost cutting affect your work with elderly people?

Ms Shalay: We are told that cuts to health care spending will continue for some years to come. This will mean an even greater reduction in care. Already the level of care is not as good as it should be. Some of the most vulnerable members of our society — our parents and our grandparents — are the victims of this mean-spirited approach to debt reduction.

As employment standards are affected by Bill 49 and health care employers are squeezed for funding, the result could be a further reduction in staffing. This would be disastrous for these patients — again. They will be the innocent victims of this government's race to the bottom.

I don't think that Bill 49 is good for health care workers or for patients. It needs to be withdrawn.

Mr Plas: Thanks, Kim, for letting us take a look at your workplace.

In closing, it may appear that this presentation addresses health care cuts rather than the proposed amendments to the Employment Standards Act, Bill 49.

However, I must point out that should the proposed amendments be effected, these changes will, without a doubt, further erode the quality of care to the elderly and ailing people of this province. It has been demonstrated in this instance that as the health care institutions in this province, both private and publicly operated, desperately try to maintain a level of care for their clients, staffing has been cut.

Also, as Kim has attested to today, in the attempt to deal with these cuts, workers' conditions of employment have already deteriorated. Their ability to earn a decent living is affected by the decrease in hours of employment available to them. Their own health and safety in the workplace is affected by the downsizing of staff.

How will Bill 49 affect workers and others in Ontario? Allowing employers to negotiate minimum standards in the workplace lower than which currently exist will put additional pressures on workers already striving to make a decent living. As a result, as in the above instance, patients relying on our health care system will not receive the type of care to which they are entitled. Workers will have no choice but to perform their duties as best they can, not necessarily as best as they should be, in order to keep their jobs. Again, the patients will be the ones who suffer in the end. Is this fair?

Limiting the time for claims and investigations against employers and, as well, limiting the amount workers can claim will further threaten workers' job security. In this instance, health care workers will wonder if they can afford to report an injury that they may sustain as they try to do the work normally performed by two people. Many health care workers already rely on hours they hope to be able to pick up as a result of being hired on a part-time, on-call basis. Will their names suddenly be put at the bottom of the list if they complain about injuries caused by unsafe patient transfers? Will they attempt to perform their duties with injuries, thereby putting a patient at risk?

Finally, if the changes as proposed in Bill 49 regarding enforcing and collecting workers' claims are put into place, there is no doubt in our minds that the quality of life for all people in the province of Ontario will ultimately be destroyed. Perhaps those workers fortunate enough to enjoy the benefit of working in a unionized environment will receive some assistance in these areas; however, who will assist those workers who are not represented?

The amendments as proposed in Bill 49 will most certainly cause lengthy delays in the processing of workers' claims. How will these workers sustain themselves and their families during a period of time when they may be unable to work? What purpose will it serve to give workers the option of taking their claims to a court proceeding, when they most likely will not be able to afford to exercise that right? Why should a worker ever be forced to pay a private collection agency a fee to collect what is rightfully theirs?

Where is the government's responsibility in all of this? We believe we should be able to rely on our elected representatives to ensure that the rights of workers in this province continue to be recognized.

Once again, we thank you for the opportunity to appear before you.

The Chair: You've left us about two minutes to divide between the three caucuses, so about 45 seconds each. We'll start this time with the official opposition.

Mr Hoy: Thank you very much for your presentation. The monologue that you had together at the beginning was similar to what I have heard from others in the health care area —

Mr Plas: This was a dialogue.

Mr Hoy: — and I just want to say to you that they're similar in nature. Patients who should maybe be requested to get up and walk for reasons of maybe a bad leg, but the nurse or the caregiver just doesn't have time to go and do that. So they can't walk perhaps as quickly, as well, and may be permanently damaged. I've heard this from health caregivers in all areas, including the hospitals, so you're right, the cuts have been quite widespread and have the same effect, region to region, in health care. I appreciate your presentation today.

Mr Christopherson: Thank you for your presentation. It's nice to have just a little break in the usual style and have a little different approach. It was quite enjoyable and quite effective.

I just want to ask you to embellish a bit on the notion you bring forward here that people who are entering the health care system will not receive as good care as they would otherwise, and not just because of the cuts in health care but they will be affected by the stress levels that are put upon workers. I'm assuming you're also suggesting that stress would be increased even more by the knowledge that the minimum rights you have as a worker have been watered down as a result of Bill 49. Can you take a minute to expand on that?

Ms Shalay: The residents that are coming in now, we don't have as much time to spend with them on a one-to-one basis as we used to. There have been many times when I've had a resident come up to me crying because they just want someone to sit down and talk with them, just to spend time with them, but we haven't got the time any more. We've been cut back to one and a half to two staff members per shift, and it's dangerous to try to lift someone who's supposed to be lifted with two people. Yes, we have a medi-lift, but still you're supposed to have two people to operate that as well. We've only got one person operating it half the time. Then you get residents who fight with you. It's difficult. It's very hard.

Mr Christopherson: Thank you for your presentation.

Mr Plas: The only sure preventive measure against aging at this point is being run over by a streetcar or

some such measure. Otherwise, we're all in the same boat, regardless of political stipe or economic condition.

Mr O'Toole: Thank you very much for a very, very interesting presentation. It's quite a unique bit of theatre. Anyway, the fundamental changes of reform to long-term care are very important. The minister has allocated \$11 million to long-term care, additional money. There's a changing strategy in that area which I think is current to the point you were making here today.

Mr Plas: If I might interject, it doesn't appear anywhere in Kim's workplace.

Mr O'Toole: I would get into a discussion there — but the collection fee is very important. You're suggesting that perhaps the employee — the intent of the act under section 28 is very clear: "The director may authorize" the collection — "the collector to collect reasonable fees or reasonable disbursements or both from each person from whom the collector seeks to" — from whom the collector is seeking the owing under the act —

Mr Plas: Sir, if you have trouble reading it, I'm sure there'll be a hell of a lot of trouble implementing it. Again, as the previous presenter said, I'm entitled to 100%, not 75% or 25%. I'm entitled to all of it.

Mr O'Toole: That's exactly what the act says.

Mr Plas: If you can't read it, I'm sure the —

The Chair: Sir, excuse me. Would you allow Mr O'Toole to finish his question, then you can respond.

Mr O'Toole: I think that's what the act is saying, sir, in all respect. It's really saying in the next part that moneys that are attributable to wages, compensation, amounts paid in respect to every person owing under the act shall be paid to the person. So all the moneys are owed to the person who has the claim.

Mr Plas: Are you going to take up your allotted time just to — or am I making the presentation to you?

Mr O'Toole: Well, I'm trying to clarify —

Mr Plas: Listen. This government has done absolutely nothing to show that it has any indication of being friendly to workers — not only that they're mean-spirited, they're stupid, and they're stupid for this reason —

The Chair: Okay, thank you. If you two care to carry on the debate after the meeting, that's fine, but we have run out of our allotted time. Thank you for making your presentation before us today.

Mr Plas: Thank you.

The Chair: With that, we've had all our presentations here today, so this committee stands recessed until 9 o'clock tomorrow in Kitchener. Thank you all.

The committee adjourned at 1645.

CONTENTS

Tuesday 20 August 1996

Employment Standards Improvement Act, 1996, Bill 49, Mrs Witmer / Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, M^{me} Witmer	R-913
Oakville Chamber of Commerce	R-913
Hamilton and District Labour Council	R-915
Social Planning and Research Council of Hamilton-Wentworth	R-917
Hamilton District Chamber of Commerce	R-920
Hamilton-Wentworth Coalition for Social Justice	R-923
Burlington Chamber of Commerce	R-925
Ontario Network of Injured Workers' Groups	R-928
Hamilton Steelworkers Area Council	R-930
Labourers' International Union of North America	R-932
Hamilton Construction Association	R-934
Canadian Auto Workers, Local 199	R-937
Hamilton-Burlington CUPE Health Care Workers Joint Action Committee	R-939
Turkstra Lumber Co Ltd	R-941
Golden Horseshoe Social Action Committee	R-944
Canadian Auto Workers, Local 504	R-946
Canadian Union of Public Employees, Local 3096	R-948
Ed Gould	R-950
United Steelworkers of America, Local 1005	R-952
Niagara South Social Safety Network	R-954
Peter Cassidy	R-957
Ontario Public Service Employees Union, Local 546	R-959
Provincial Council of Women of Ontario	R-962
Norma LaForme	R-963
Canadian Union of Public Employees Niagara District Council	R-965
Simcoe and District Labour Council	R-968

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Substitutions present / Membres remplaçants présents:

- Mr John R. O'Toole (Durham East / -Est PC) for Mr Carroll
- Mr Derwyn Shea (High Park-Swansea PC) for Mr Maves

Clerk / Greffière: Mr Douglas Arnott

Staff / Personnel: Mr Ray McLellan, research officer, Legislative Research Service



R-22

R-22

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**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 21 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 21 août 1996

The committee met at 0904 in the Valhalla Inn, Kitchener.

EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): Good morning. I'd like to call the meeting to order and welcome everyone to the third day of hearings on Bill 49, An Act to improve the Employment Standards Act. I'm particularly pleased that Minister Witmer has been able to join us here this morning for our deliberations.

BRANT COUNTY COMMUNITY LEGAL CLINIC

The Chair: With that, I'd like to proceed to our first speaker, Brant County Community Legal Clinic. We have 20 minutes for you today to divide as you see fit between presentation time or question and answer.

Mr Ian Aitken: Thank you for the opportunity to speak this morning. My name is Ian Aitken and I work as a lawyer with Brant County Community Legal Clinic.

One of the principles I think should be kept in mind in your deliberations is the concept of an honest day's pay for an honest day's work. The Employment Standards Act is in place, and the primary intent is to ensure that this fundamental principle is taken care of when people go out to work. It's our view that any amendment to the act that makes it more difficult for an employee to obtain money that is owed to them under the act or that leads to the result that the employee receives less money than they are owed is against that principle of an honest day's work for an honest day's pay and is against the intent of the act.

At our clinic, as in many of the clinics across the province, we provide advice and representation to individuals who often work at entry level wages or at minimum wage. One of the realities that our clients and we as counsel face every day is that these individuals have very, very few resources available to them to enforce their rights. They have very few resources available to them if for whatever reason they leave their employment or are forced to leave their employment. The reality, again, that we see every day is that loss of employment can be devastating to these individuals.

The reality today in Ontario is that quitting employment or being terminated from employment is devastating. It can create economic catastrophe for many of our

clients. The reality is, if someone is terminated or quits employment, they've obviously lost the income from the employment. They also face penalties under the Unemployment Insurance Act and they are often ineligible for even general welfare assistance. So leaving employment, quitting or being terminated today in Ontario can lead to homelessness, loss of basic shelter and certainly inability to meet basic needs. Over the last two weeks I have met clients who have come into my office and are in exactly that situation.

Because of that reality, people who are working at a position where there are violations under the Employment Standards Act are put in a position where they are very, very hesitant to make complaints about any violations, the reality being that if they do make a complaint, they are concerned about being terminated. As I've mentioned, the consequences of being terminated are very devastating. The result is that many of these clients will continue to work even though there may be violations under the act. There is always the option, after they leave employment for whatever reason, whether they find another job or they're laid off etc, that they can then make a complaint and recover moneys, wages, that are owing to them.

The difficulty that we see with the restriction on recovering only six months of moneys is that individuals will be able to go back for a lesser period of time to recover any moneys that are owing to them under the Employment Standards Act. An individual could face a situation where they are working, there are violations under the act, and yet they continue to work for the income. They realize that the consequences of making a complaint may lead to a dismissal and they will be left in very difficult circumstances. For that primary reason, any reduction in the limitation in recovering moneys, certainly to six months, we feel is unacceptable.

0910

The other reality is that many of our clients, as I've mentioned, do not have ready resources available to pursue a civil claim. Civil claims can be costly. Many of our clients are often in a situation where they are struggling to meet their basic needs and it's difficult sometimes to proceed with a civil claim when those immediate concerns are paramount. For that reason, the maximum of \$10,000 available to be recovered and the restriction on filing the complaint under the act, or choosing between that and starting a civil claim, we feel would place our clients in some circumstances in a difficult position. Certainly in some circumstances our clients, employees, would be placed in a position where they would have to choose between those two avenues. The reality is that in some circumstances they would be forced, because of

their circumstances, to accept less money than they are owed.

The two consequences of that would be, one, if the employee is not in a position to recover the full amount of what they are owed for violations under the act, the cost is shifted to the employee. That's money they are not going to recover. And in some circumstances, because it's not income in their hands, they could be placed in a situation where that shortfall would have to be made up by the public purse, whether it's social assistance or whatever.

It's our position that the cost of any violations should be borne as much as possible by the employers. If there is a violation, the employers should be responsible for paying the moneys owed. There should not be a shift in those costs to employees; there should not be a shift to the public purse.

For those reasons, the amendments that are proposed, specifically the six-month limit on recovery, reducing the maximum recoverable to \$10,000, and the difficult restrictions and difficult choices that would have to be made as a consequence of choosing between filing a claim under the act or proceeding with a civil claim, should not be put into effect.

It's our feeling that if an individual goes out and does an honest day's work, they should get an honest day's pay. We feel the act provides some protection in circumstances where they do not get an honest day's pay, and certainly for the working people in our province and the reality of their circumstances, it's important to provide as much protection as possible. Any restrictions or reductions in the remedies or the amount of money they can recover is against the interests of working people. If anything, there should be more investigations under the auspices of the act and there should be more enforcement and more collection.

Mr Dwight Duncan (Windsor-Walkerville): Thank you for your presentation, Mr Aitken. One of the themes that comes up consistently is this notion of the reducing of standards, number one. But one of the things that concerns me is that the business community and others are looking for what they would term, I guess, a more efficient and better application of the law, and it strikes me that lowering the standards really doesn't provide for greater efficiency. My question to you is, because you deal with cases continually, would it be your view that the vast majority of employers in your community are good employers and that the people you deal with and the people your clients deal with are in a minority?

Mr Aitken: I can certainly speak from personal experience through my employment history and certainly from the contacts I've had in Brantford, and I've also had the opportunity of working in Kitchener and Toronto. I can't disagree with the comment that most employers are good employers, but the issue for myself as an advocate and the issue for my clients is, what are the remedies when I run into an employer who is not good, who is not providing me with wages or benefits?

Mr Duncan: Certainly, and that leads to my supplementary, and I asked this of a chamber of commerce group yesterday: Then why reduce the standards? Because it doesn't affect most employers. What they're

doing affects a small minority of employers in terms of enforcement of minimum standards. My experience with this is, as an employer before, that the Employment Standards Act, of all pieces of labour legislation in terms of day-to-day business, is really one of the least intrusive statutes, and that if the agenda is one of enforcement, you can achieve efficiency without lowering standards. Would that be your view?

Mr Aitken: I would agree with that, yes.

Mr David Christopherson (Hamilton Centre): Thank you, Mr Aitken, for your presentation. First question, just so there's absolutely no doubt: I'd like your comments on the fact that the minister continues to claim that there is no reduction in the minimum standards guaranteed to workers under Bill 49. Do you agree with that?

Mr Aitken: I'll respond in this way, sir. Certainly it's my view that the reality in terms of our clients is that at the end of the day they will have less money in their pockets in certain circumstances, and it's our view that if that money is owed to them by employers as a result of their "sweat equity," they should receive that money. So clearly in that sense there's a reduction in standards.

Mr Christopherson: Well, the question would be very broad, it would be in any sense, because the minister and certain members of the business community continue to suggest that there is no loss anywhere whatsoever, but that there might be a shifting or a massaging, but that there's no direct loss. We've made it very clear that our position is that of course there is, there are rights and minimum standards that have been dropped here, and at the end of the day workers have less protection than they had in the existing bill.

In the short time I have left I'd like to move to the issue of the two years down to six months. Again, we hear from certain members of the business community and the government that the employee has a responsibility to make a claim in a timely fashion. We've continued to suggest that there are circumstances where workers don't have that option of immediately making a claim for all the reasons you've mentioned. We've heard that in Toronto and we've heard it in Hamilton. Could you just expand on the kinds of circumstances where six months is not fair to employees because, given their personal circumstances, they cannot make a claim or may not be aware that their rights have been violated?

0920

Mr Aitken: It's a fairly common occurrence and I think I've tried to address that circumstance, but I have had contact with employees who will contact the clinic and inquire as to their rights under employment standards, sometimes to determine what those rights are, whether or not there may be a violation and what the remedies are. We respond and tell them what their remedies are under the legislation and we advise them of how to proceed with a complaint. But as I've indicated, there is a concern on the street with employees that if they make a complaint, there is a possibility that the complaint will lead to difficulties in the workplace. This is the real world and people sometimes, believe it or not, end up losing their job or are terminated for reasons other than are appropriate.

Usually the response of the client is, "Can I make a complaint after I leave?" We advise them that yes, they can, and their rights are not prejudiced. But if there's a reduction to a six-month period, that decision about when to make a complaint becomes more immediate and, as I've tried to point out, it can be very devastating.

Hon Elizabeth Witmer (Minister of Labour): Mr Aitken, thank you very much for your presentation. Obviously our concern is that we collect as much money from the employer community, and as quickly, as possible. What we're attempting to do within the bill endeavours to do exactly that.

You've expressed concern about employees coming forward and acknowledging and reporting violations. Do you not tell them that there is an anti-reprisal provision within the Employment Standards Act at the present time? Do you not tell them that the employment standards program will investigate anonymous claims? Do you not encourage them to report employers as quickly as possible when there are violations in order to ensure that other people within that workplace receive the appropriate protection?

Mr Aitken: Yes. The reality of our clients' situation often is that their immediate and primary concern is to ensure that they maintain their employment. The reality that we face and our clients face is that they are concerned about losing their employment. Yes, there are reprisal provisions. Our clients are still concerned and, as I've pointed out, when they balance the opportunity and the protection under the act against the reality that if they are terminated they will be very possibly without any income for a substantial period of time, the decision, although it can be difficult, is often to stay in employment, tough it out and try to obtain a remedy later. That is the reality we see and that our clients deal with. Certainly I appreciate there are provisions under the act for protection.

Hon Mrs Witmer: Exactly, and I think you do have the responsibility to inform your clients. As far as the six-month time line, as you know, that is very consistent with the majority of the provinces across Canada. Our attempt is to ensure that violations of the act are reported as quickly as possible. You know that the longer we wait, the more difficult it is to obtain evidence, the more difficult it is to get first-hand, accurate information from witnesses. What we want to do is make sure that employers who are violating the act are reported as quickly as possible and that people are compensated. That's the reason for the reduction in the time line. As I indicated to you, it's very consistent with other provinces.

We are not happy that at the present time we are only collecting about two thirds of all of the orders to pay. We want to make sure that we get the money into the hands of the most vulnerable employees in this province as quickly as possible. That's the reason for the changes, and these changes will accomplish exactly that.

Mr Aitken: I appreciate your comments. I disagree that this will be the effect of these amendments.

Hon Mrs Witmer: Do you have a better solution as to how we can get more money into the hands of employees and how we can get more money from employers who are violating the act?

Mr Aitken: As I mentioned in my presentation, the solution may be to put more resources in the hands of the people who are enforcing the legislation. How we can get more money into the hands of vulnerable people by reducing the amount of time that they can claim is beyond me. It strikes me as odd that reducing the right to get moneys will somehow get more money into their hands. The reality is that people will be faced with a choice where they have to make a decision after six months as opposed to two years. It would be easier in any type of enforcement situation to say, "Well, we're not going to enforce for two years; we're only going to enforce for six months." It will make it easier, but it won't put more moneys in the hands of vulnerable people. It just doesn't make any sense.

The Chair: Thank you, Mr Aitken. Unfortunately our time has expired, but I appreciate your taking the time to come before us and making a presentation here today.

Mr Duncan: On a point of order, Mr Chair: Can I place a question with research counsel?

The Chair: In writing, Mr Duncan.

Mr Duncan: We have had contradictory —

The Chair: That's my ruling, Mr Duncan. Sorry, that's my ruling.

Mr Duncan: We have had contradictory evidence with respect —

The Chair: Mr Duncan, excuse me. You're out of order.

Mr Duncan: — to other provinces. I think it needs to be asked because we've had contradictory evidence placed by —

The Chair: Mr Duncan, you are out of order.

Mr Duncan: We've had contradictory evidence —

The Chair: Mr Duncan, what part of what I just said don't you understand?

Mr Duncan: — asking a question —

The Chair: In writing, you may pose any question to the research assistant.

Mr Duncan: I would like to pose it verbally because we've had contradictory evidence presented to this committee and I would like to raise it publicly so that people can know. A witness appeared before this committee who contradicted the evidence that's been presented on Monday with respect to Ontario relative to other jurisdictions on the minimum standards. That was the professor from Osgoode Hall law school, who's an expert. I simply would like to place publicly a request that her response and the response of the minister be brought together for the committee so we can determine for ourselves which response is more accurate. It's in the interests, I think, of public discussion and public debate.

The Chair: You've placed your question, Mr Duncan.

Mr Duncan: Thank you.

The Chair: And you're out of order.

0930

UNITED STEELWORKERS OF AMERICA,
LOCAL 2859

The Chair: We'll move on to our next group, the United Steelworkers of America, Local 2859, Mr Beveridge. Good morning. Thank you for joining us, and again

just a reminder that we have 20 minutes. You can divide it as you see fit between the presentation time and question-and-answer period.

Mr John Beveridge: Thank you very much for allowing me the opportunity to speak before the forum. Hopefully I'll keep us on track and keep you on schedule.

My name is John Beveridge. I'm the president of Local 2859 of the United Steelworkers of America, which represents 500 hourly workers at a BMW facility in Cambridge, Ontario. It's also a noteworthy point to mention that this employer employs an additional 800 salaried and non-unionized workers, and the Employment Standards Act affects both groups of employees equally.

I'm also very active in the community. I sit on the board of directors for the Cambridge United Way. I've had various involvements with the community agencies, those that deal generally with the unemployed and the assistance of those unemployed, so I think I can speak to the issue of vulnerable people in Ontario with some personal experiences.

I feel compelled to come before this committee and speak out on Bill 49 because I think it's wrong for the workers of Ontario and it's a regressive piece of legislation that exposes those vulnerable people in the workforce. I'd like you to consider my comments and those of the other people who come before you today and make the necessary changes to do the right thing in Ontario.

I'd like to suggest to you there was a reason originally for the act that's presently in force. There were no common standards at one point in time in Ontario and people, as a result of the lack of common standards, were vulnerable and exposed to situations that legislators saw fit to correct. The importance of that act is fundamental in the labour relationship in Ontario.

Section 3 of the bill, which I'd like to refer to, is the flexible standards. There's an erosion of those common standards that each and every worker in Ontario enjoys. That's the protection of hours of work, vacation pay, entitlement to severance pay and entitlement to public holidays. If you remove that or diminish that or if you make that flexible, that's a regression for the workers of Ontario. Whether they're unionized or non-unionized, they're equally affected by those changes.

With respect to unionized environments and the collective agreement situations that exist in those environments, the Employment Standards Act will be imposed directly into those collective agreements and will be enforceable and investigated through the provisions of those collective agreements. Mainly, that's the grievance and arbitration procedure.

Through the grievance and arbitration procedure, it's the union that bears the onus of the investigation and the carriage of the enforcement and likewise the costs associated with that. Presently unionized employees enjoy the powers and investigative abilities of the employment standards officers in the employment standards branch, and that will be downloaded to the unions with considerable detriment, I might suggest, to the unions' ability to function. It also leaves the unions exposed to fair representation claims on these issues that have never been exposed to the union before.

I understand that on Monday the minister retracted certain sections of Bill 49. However, I'd like to speak to those proposals that have been retracted because I think they are still very active and they'll come back through the employment standards review. That's of major concern to unionized workers, and particularly those unionized workers I represent here before you this morning.

In the collective bargaining situation whereby you can bargain away certain rights it's going to cause some major problems. A lot of times the collective bargaining process is somewhat of an adversarial process. My personal situation is that last year we had a labour dispute that lasted 21 days based on a proposal that the membership of the local union I represent was not prepared to accept. If you put yourself into a situation whereby those rights and conditions we've enjoyed now become a question of bargaining proposals, I think it will only ramify those labour disputes and enhance that adversarial relationship. That's not the relationship we wish to obtain. These are tough times, and we wish to work in a coherent fashion with employers and retain exactly what we have today.

I have a problem with the time limits, as the previous speaker has spoken towards, the six-month time limit for making claims. I know a young Vietnamese gentleman who's allowed me to use his story as long as I don't use his name, for fear of reprisals with his present employer, as a matter of fact. That young gentleman came to this country as a refugee and was successful in obtaining some employment in a small automotive manufacturing facility in Cambridge. His English was very poor, his knowledge of the working ways of the land was very poor and as a result of that his employer failed to provide him with statutory holiday pay for a period of one year. When he left that job and he discovered at that point in time that in actual fact he'd been duped, he went to the employment standards branch and through the officer was successful in getting what he was legally entitled to. Under these proposals, that situation wouldn't exist because of the six-month rule; he'd only be entitled to claim back to six months. This denies that individual, I believe, what's rightfully his. I think that's wrong.

These are the most vulnerable people in Ontario. These are the ones who need the maximum protection they can possibly get. You might say they have an avenue for civil litigation. Again, these are the most vulnerable people who don't have the natural resources and who have been denied statutory rights and the moneys they're owed under the employment contract. I suggest to you that it's very difficult for them to proceed with a civil action and to be successful.

Then, if it's the involvement of a collection agency to collect those funds, the proposals in Bill 49 allow for a fee. Again they receive less than what they're legally entitled to. I suggest that's wrong. I don't believe that's the intent of any piece of legislation, when it's intended to correct, to make it administratively easier to steal money from the most vulnerable people of Ontario through privatized collection agencies. I don't believe that's the answer. I believe that the answer is stronger enforcement of the act, more resources applied towards the enforcement and the collection of that rather than

exposing and condoning unscrupulous acts on the part of the employers.

The hard fact and the hard reality of this is that there are unscrupulous employers out there and that these things will take place, and they need protection from individuals the likes of yourselves. I cannot confer enough to you how important it is to protect these individuals. Unionized workers have some protection through collective bargaining and through the labour and arbitration process. But that throws us into a black hole likewise. If any of you have ever dealt with arbitrators, and I've dealt with a few of them, jurisprudence for arbitration matters doesn't happen overnight. It takes a long time for that to be established. In an area where the employment standards officer already has great tools, has jurisprudence before him, you're throwing that in the area of an arbitrator who's never, ever been exposed to that area before. That can only lead to labour disruptions. That's not the correct way to move on this.

I see the contracting of the private collection agencies as a download of the responsibility that the Ministry of Labour currently bears towards the employees, whether unionized or non-unionized, in the province of Ontario. That's the responsibility; that's what people expect from their government: that their government is firmly behind the statutes that are in place and that the government will enforce to the fullest of its abilities and collect those moneys. The privatization of the collection of those moneys ensures that the full amount is never collected, based on the fee.

0940

The Minister of Labour has just said to the last people who presented here that the goal is to collect the maximum and to get the maximum amount of dollars into the hands of the vulnerable, and I agree with that, but this bill doesn't do that. This bill reduces that to something much less than the maximum and that's not correct. That's completely wrong. That goes to encourage unscrupulous employers because if you go through the collection process and the negotiating process that'll take place, something less than the full amount will be collected and that doesn't help. People will be forced through the process and the length of time that it takes and the need for the dollars and the need for the immediate retention of those dollars will force people to accept substandard agreements, substandard settlements and encourage people to continue to break the minimum standards. I think the penalty should be severe and the penalty should be swift for those who break the Employment Standards Act.

I know that the ministry still has the two-year provision to investigate and the ministry has a two-year provision to collect moneys. If an employee pursues a claim of less than \$10,000 through the ministry and seeks the ministry's assistance on this, it could be potentially four years before any individual sees any money. I think that's wrong. That's very wrong. The minister has already claimed that the intent is to get the maximum amount of dollars in the hands of the vulnerable. Four years, I suggest to you, to somebody who's just been six or seven months without an income is a long, hard row to hoe. That's wrong and I think that has to be changed.

I think the act makes those rights that each and every one of us has come to enjoy in the province very, very difficult to obtain through some of the avenues that I've just highlighted to you, and particularly the collection avenue and the right to civil suits.

I don't believe that the contracting out or the privatization of this thing is the correct thing to do. I think additional resources into the hands of the employment standards officer is the way to go to enforce the minimum standards that the Employment Standards Act should contain.

Through my experiences in the labour movement I've met many individuals who will recall the times when there was no such thing as minimum standards and they'll recall the times when things were very difficult, and I'm sure each and every one of you has listened to an elderly person say this to you. That's exactly what we're hoping to retain here. I don't believe that old business people sit in a room somewhere and say: "Do you remember the times when it was easier to exploit your workers? Well, let's get back to those times." That's what this bill does. This bill exposes those workers. I don't believe that's the type of province that we want and I don't believe that's the type of philosophy that we'd like to foster between management and their workers. A cooperative fashion is the thing that we'd like to have between workers and management.

So I suggest to you very strongly that you have a look at what's before you, that you hear the submissions very clearly and that you do the right thing, you protect the vulnerable people of Ontario and you change Bill 49. Thank you very much.

The Chair: Thank you, Mr Beveridge. We have one and a half minutes per caucus. The questioning this time will commence with Mr Christopherson.

Mr Christopherson: I'm sorry. What was the time, Chair?

The Chair: One and a half minutes.

Mr Christopherson: Thanks very much for your presentation, John. You're going to probably hear the minister for the balance of the morning, certainly her government members have, talking about the fact that if they can collect half a loaf or two thirds of a loaf in terms of money owed to employees, they ought to consider themselves lucky and be grateful that they're getting that much rather than accepting the fact that 100% should still be the goal. They will suggest to you that by going after collections through a private agency, they're going to get more of those dollars.

Do you think it's fair to say that if the government were really concerned about making sure that employees didn't get ripped off in terms of money they're owed, particularly when there are bankruptcies, which is the majority of the money that doesn't get collected, that they wouldn't have gutted the employee wage protection plan in the first place which was there for that sole purpose?

Mr Beveridge: I absolutely concur with you, Mr Christopherson, that the reduction from the \$5,000 level to the \$2,000 level seriously inhibited the ability of employees to get what they're intended to, what they're rightfully owed. I don't think they're interested in the

protection and putting the moneys into employees' pockets.

Mr Christopherson: Would you also say that it's the position of your local union that the government ought not to accept that 75% is okay, that it ought to be 100%? As we heard from the previous presenter, people want the money that they're owed. The exact wording he used was "an honest day's pay for an honest day's work." This is money they're owed. It's fair to say, I think, that if they don't get that money, it's been stolen from them and if you know where it's coming from, there's an obligation on the part of the government to ensure that money's collected. Is that not why there are minimum standards in place, the workers' bill of rights, the Employment Standards Act, in the first place?

Mr Beveridge: That's absolutely right, and I concur again. My local union believes very strongly in a fair day's pay for a fair day's work. We bargained towards that and that's the philosophy that we do in fact work under. Anything less than 100% that's owed to any individual is unacceptable. Absolutely correct.

Mr John R. Baird (Nepean): Thank you very much, sir, for your presentation this morning. We appreciate the time you took to prepare it and to come and see us.

I just want to clarify one point, that two thirds of orders now aren't collected. We're only collecting 25 cents on the dollar on average, \$16 million of \$68 million. We find that unacceptable. That's not something that radically changed over the last year, though. That's something I think that's been an ongoing problem for successive governments and all parties, not a partisan level.

During the previous government, they were only collecting 25 cents on the dollar. In 1993, the previous government disbanded the collections branch at the employment standards division, displacing 10 workers, saying, "We're not going to do that any more." The regrettable notion is that the collections didn't go down. Particularly in the long term they went down to about 20% or 15%, but went up to 25% within a period of time.

So I guess if I had a question, it would be: Are you satisfied with collecting 25 cents on the dollar and do you think we've got to do a few little amendments? If it was so easy to collect more just by putting more money into employment standards, why wouldn't successive governments, the Liberal government, the NDP government or the Conservative government just do that if it was just a matter of putting more money?

Our feeling is that we've got to bring some major changes in to do better because we're not satisfied with 25 cents on the dollar. We're not satisfied with two thirds of orders not being collected. We think we've got to do something really big to shake things up to ensure that we do a better job for workers.

Our goal is 100%. We want to see every dollar owed to every worker returned to them and we're going to work towards that goal and we can certainly do better than 25 cents on the dollar, I can tell you that, and I'm ashamed to admit that it's only 25 cents on the dollar.

Mr Beveridge: I find myself agreeing with you with respect to less than 100% is unacceptable and that 25

cents on the dollar is an unacceptable level of recovery. There's no question about it.

I disagree with you, however, that the remedy is throwing just more money at the situation. I understand that your government's involved in fiscal restraint in all areas that the government's involved in, but the abilities and the powers of the employment standards officers to enforce and to collect and expedite are the things that this government should be looking at towards this bill. It shouldn't be looking at private collection agencies and less than 100% being acceptable. That's exactly what Bill 49 does and I disagree with Bill 49 based on that.

But I do agree with you based on the 25% of the claims and less than 100% is acceptable. I think the standards should be the enforcement officer is the one with the powers and the abilities. So if you're going to change the bill to reflect what you've said, then change the act to reflect the increased powers of enforcement and collection for the employment standards branch.

Mr Duncan: On Monday, the government was suggesting that in fact the real problem or a major part of the problem with respect to collections is the placement of wages relative to bankruptcy. On Monday they were saying that in fact it's the federal government's fault for not looking at that. Would you concur that a lot of the wages that do go uncollected are a result of bankrupt employers and employers who just close shop and it's not enforced at the federal level?

Mr Beveridge: The majority of the information that I've seen on this subject clearly states that the biggest portion is as a result of the bankruptcies and the inability to collect, particularly when the labour individual doesn't rate as a preferred creditor.

Mr Duncan: If I can, just by way of supplementary, a government that's cut 45 employment standards officers and 26.6% of its enforcement budget in that branch in its operation without a business plan, do you think that makes sense if they tell you, on the one hand, they want to increase and, on the other hand, they're taking away resources?

Mr Beveridge: It makes absolutely no sense and they're talking out of both sides of their face as a matter of fact.

The Chair: Thank you, Mr Beveridge for appearing before us here this morning. We appreciate it.

Mr Beveridge: Thank you.

0950

CHAMBER OF COMMERCE OF KITCHENER-WATERLOO

The Chair: Next up will be the Chamber of Commerce of Kitchener-Waterloo. Good morning. Welcome to the committee. We have again 20 minutes for you to divide as you see fit and I wonder if you'd be kind enough to introduce yourselves for our Hansard reporter, please.

Miss Rosemary Rowntree: My name is Rosemary Rowntree.

Mr Jim Berner: My name is Jim Berner. I'm the chairman of the labour subcommittee for the federal and provincial affairs committee of the chamber of commerce.

Miss Rowntree: Mr Chairman, Minister and committee members, the chamber is appreciative of the opportunity to make this presentation to you and submit our report. Thank you for inviting us to this important forum.

Like Mr Beveridge, to a person the chamber of commerce is committed to ensuring that we have an Employment Standards Act that is fair and just for both employer and employees. We want to see this act evolve, as it should naturally, into a win-win situation.

Throughout the report and our presentation, we've adhered to the assumption that the changes in phase 1 are strictly administrative and that they're for clarification purposes. We understand that phase 2 yet to come, and there will likely be discussions yet on that, will be more substantive issues dealing perhaps with benefit levels or tradeoffs and negotiations. So our comments today are based on the administrative issues as we understand them being presented.

I'll briefly outline five of the main changes that we see that we quite agree with and then Jim Berner will go over a couple of the prime concerns that we have with the proposed changes.

First of all, as an overview a general comment: We quite agree with the need for change and the three stated objectives in phase 1 that Bill 49 has. We don't want to see benefit level changes. We'd like to see the clarification and we see the objectives being met through this proposal.

The five areas that we are quite in agreement and want to comment on are the limitation periods, the claims amounts, the choice of procedure, the collections and the access to electronic records.

In the limitations period there are two aspects here: First, we quite agree with the proposal to limit the entitlement period to recover money under the act to six months instead of two years. We see this putting the onus on the complainant to move in a timely fashion and we're concerned that delays will often result in longer and more difficult investigations, therefore more cost as well.

The second angle to the limitations period is the time change from 15 days for an appeal to 45. We see this as allowing cooler heads to prevail, to putting judgement into the appeals rather than emotions and easing that frantic scramble for everybody to get their act together within a very short period of time. We also see that this change in appeal days and the accompanying opportunity for legal advice will lead to a reduction in unnecessary appeals.

Under the claims amount, we quite agree with the proposed maximum of \$10,000 per order and see no significant harm to individuals who wish to claim beyond that point.

We are particularly pleased with the choice of procedure, that claimants must go either through the court system or the employment standards system. We see this eliminating the possibility of duplicate and simultaneous claims. The multiple forums that individuals and employers must go through is costly and we see a reduction cost there in both the private and public purses. We see the workload also on the court system and the employment standards system being reduced through this measure.

In addition, we have known occasions where simultaneous complaints are made to the court and the employment standards system and a whiplash effect comes into play where one decision or one proposed decision may be played off against the other.

The collections being proposed to be put over to specialists is particularly interesting to us. We'd like to see the employment standards officers doing what they do best: investigation and enforcement. We'd like to see the collections put in the hands of specialists.

Finally, on the access to electronic records, we've no problem with that. We want to make sure, though, that the government puts in place some kind of a method to ensure that those records that are revealed are pertaining to the complainants only and that the privacy of the parties is protected.

Now Jim will address the two concerns we have with some of the changes.

Mr Berner: We have primarily two concerns, the first being that we take issue a bit with the two-stage performance and, second, the powers given to the arbitrator in union settings.

The two-stage reform: We don't quite understand the need to introduce change in a two-step process. We thought it would be better to have the presentation in one complete package. However, it has been decided to do the two-stage reform and so be it.

Arbitrator jurisdiction: On this issue we have numerous questions that are left unanswered in the proposed changes, such as: What is the arbitrator's role, who are the arbitrators and is there a list of approved arbitrators such as the list approved by the office of arbitration through the Ministry of Labour? Does the government envision an arbitrator in the same way as the labour act sees a settlement officer? What is the method of appointment? Are the arbitrators approved by the involved parties or are they appointed by the government? Also, we'd like to have a process to appeal or review an arbitrator's decision clarified.

We posed these questions to highlight the ambiguities of this position. The competency of the arbitrators hangs on the answers and hence the issue of the arbitrators' powers must be re-examined.

The concept of a mediator is preferable to an arbitrator as it exudes an image of win-win and helps to eliminate the confrontational posture that may be prevalent in the grievance procedures. This area needs considerable clarification.

In conclusion, we support your proposals and the change to the act and recommend only minor clarifications to improve it, being Bill 49. We do find it curious that the government wishes to divide the administrative and substantive issues into two phases, however. We respectfully submit our report.

The Chair: Thank you very much for your comments. That leaves us three and a half minutes per caucus. First up this round will be the government. Minister.

Hon Mrs Witmer: Thank you very much for your presentation. We certainly appreciate the effort that you have put into this.

I guess I'd like to deal with your concerns and your concern that we've done this in two stages. As has been

indicated, the initial stage is primarily to deal with efficiency in administration and certainly to encourage collection. As we've indicated, we want to get more money into the hands of the employees much more quickly. We then feel it would be appropriate to do a complete review of the act, and obviously all of the information that we're going to be acquiring over the next three weeks is going to be very beneficial. It's going to help us to prepare the discussion paper and that's why we're doing it in two stages. We feel that the changes that are being proposed right now can be dealt with quite quickly and they certainly will enhance the administration and the efficiency of the act. So that is the reason for that.

You've expressed some concern as well about arbitrators. You've raised some issues here, but what is it that you are specifically concerned about in this area?

Mr Berner: We're concerned that they might have powers that they shouldn't have. In other words, they're given all the powers of an officer of the Employment Standards Act and I'm not so sure that they should be in that position. They should be more in an arbitrator's position, like not — how can I put it — not so much investigating etc. We prefer a mediator to mediate the dispute rather than going ahead and making judgements that should be the judgement of the officers of the ministry.

Hon Mrs Witmer: Okay. I guess that being the case, and obviously you would be most supportive of the new powers that we've actually given to the employment standards officer, and that is, we have given the officers the power to mediate and resolve disputes between the employers and the employees without a lengthy and very extensive investigation. So this is certainly an attempt on our part to again ensure that we build a strong relationship between employer and employees and we feel that when parties have this opportunity to resolve issues, they are more committed to the outcomes. I guess that's the approach, that you would prefer mediation then.

Mr Berner: Yes.

1000

Mr Duncan: First of all, with respect to the two-stage process we concur with you and feel that everything should have been done in one package. We said that in the second reading debate in the Legislature.

Two, with respect to the issue of arbitrators some of the changes that they have made, I think we are supportive of around the ability of an employment standards officer to mediate, for instance.

I guess again the question I have, and I've placed this to other chambers and other business representatives, is, most of your members, at least the members of chambers that I know, never have to worry about these things. They really don't. They pay their employees. It's really, relatively speaking, a small number and there's a very real concern that whether or not it was deliberately intended, the fact is, and there's been evidence day after day now, that minimum standards in Ontario — the limitation periods, the entitlements, the restriction on recovery — really do leave those most vulnerable workers in Ontario more vulnerable than they were.

Would you concur that those minimums for the vast majority of your employers, and I am one who was and

have operated under this statute, aren't going to be affected by those statutes and that in fact I don't think anybody would disagree with the notion of improving how we enforce an act, but that we don't have to reduce minimum standards to do that?

Mr Berner: I don't think it's the intention of the government to reduce the standards. According to the material that we reviewed, it said the primary concern was the protection —

Mr Duncan: Sure, sure. But there's been ample testimony — for instance, say somebody is owed \$20,000 and it may be a small number, isn't this statute designed to protect that small number in these clauses?

Mr Berner: Quite likely, but I think you'll find too that people who are after the \$20,000 are not the most vulnerable. If they need \$20,000, they're making a good buck to start with.

Mr Duncan: With all due respect —

Mr Berner: Is somebody going to hold back a year's wages on them?

Mr Duncan: With all due respect, if you're owed a year and a half's wages and it's \$20,000, that's not a good buck. It's probably below minimum wage. So I think those people are vulnerable. I guess what I'm concerned —

Mr Berner: Yes, but the \$20,000 is the award, it's not their salary. Their salary's a certain amount and —

Mr Duncan: It's what they're owed.

Mr Berner: Yes.

Mr Duncan: It's what they earned.

Mr Berner: Which would be what, time and a half would be —

Mr Duncan: Then you don't think that restriction is a limitation? The government in its own bill calls it a restriction on recovery of money. So the chamber of commerce here doesn't see that as a restriction?

Mr Berner: It's a restriction, I believe, on the employment standards officer's right to make a ruling. They can still go through the courts and recover —

Mr Duncan: But the argument that's been put is that that's more costly. Frankly, it may cost society more. We may not see a savings. Courts are very expensive; lawyers are very expensive. In fact what the government may be doing is penny wise and pound foolish. That is, you save a little bit here, but now even assuming a worker can access the courts, and there's an issue around accessibility of the courts, even if you can access the courts, maybe that's not the most efficient way of resolving these things.

This is part of the contradiction that we see. On the one hand, we want to give employment standards officers the ability to mediate, but on the other hand we want to further backlog the courts. In our view, there's a mixed message there. What we would like to see, and we agree with you, is a complete review of the act in its entirety. We think that you can find administrative efficiencies without penalizing or without making people more vulnerable. The evidence to date right in the government's own bill: restrictions.

Mr Berner: I'm not sure it's doing any harm. As a matter of fact I think it will improve the administration, which is what you want. It'll make the act more under-

standable, which is what we want, as well as the workers should know their rights and their ability to take whatever action they have to, and to make the act more understandable will certainly bring that along.

Mr Christopherson: I find it encouraging, fascinating and helpful that you believe that this should be done in one step as opposed to two. Certainly we've been calling for that, the opposition parties. Certainly everybody who represents workers that have been impacted and are losing rights under this bill believes that it ought to be done in one review.

The minister hasn't listened to those arguments. Maybe she will listen to the chamber of commerce in her own backyard. We can only hope. She's pulled back already part of the bill. It wouldn't take that much more to pull back the rest, cancel the hearings and get on with doing a proper public review of the entire bill, so that we know what the agenda is, both public and hidden. We'll wait and see whether she's listening any more to you than she has to us.

I would also like to raise the issue of your statement that you do not want to see changes to the minimum standards for workers. I just have some difficulty understanding how you can believe that Bill 49 doesn't take away rights of workers, because I'm hearing you say that if you did believe that, then you wouldn't support the bill — at least that's the conclusion I'm drawing.

You've heard this morning if you were here earlier, and certainly we've heard in Toronto and in Hamilton, circumstances, evidence from experts, people with firsthand knowledge in the field, that there are individuals who fear for their jobs and their job security in terms of making any claims against employers, and reducing their ability to claim from two years to six months denies them the opportunity when they leave that employment, which is when most of those claims are made, because no longer is the threat over them — the threat's not there any more; they've left or been fired — they are then denied the right to claim for a year and a half of theft. It's theft. If there's money that's owed you, sir, you expect it all back. If I take something from you, you want it back. I really have trouble understanding how you don't think a vulnerable employee has lost some rights.

Mr Berner: He hasn't lost the right. He can go after the employer. It's just that he has to do it more quickly than he had before. He can't sit on his can and just wait and mull it over in his mind. As we've said, the longer you stretch this out, the longer it takes to get the information. The investigation and carrying through of the whole operation would be far more costly and to no avail. He's got six months to do something.

Mr Christopherson: I think the problem is that you characterize it as — I wrote it down — you said "sitting on his can and mulling it over." That may be a circumstance that exists, but the evidence we've heard is of a lot of vulnerable people, many of them are new Canadians, visible minorities, a lot of women, who are terrified. These are not people who are sitting back saying, "What kind of little legal games can I play with my employer?" They're terrified for their jobs, and the only reason they need the two years to go back is because we know that most of those claims are made after they leave their

employment, because then the threat has gone. Do you not appreciate that that's the circumstance some workers are in, sir?

Mr Berner: Certainly. They would have left the employment in six months as well. The six-month limit you're unemployed, the two-year limit you're still unemployed. You were saying that they need the two years because they're unemployed. Well, they're unemployed at six months too.

The Chair: Thank you, Mr Christopherson, and thank you both for taking the time to appear before us today. We appreciate your presentation.

I don't believe the clerk has been able to identify — is there someone from the Central and Western District CUPE Council here today? No one. No show.

1010

STRATFORD AND DISTRICT LABOUR COUNCIL

The Chair: How about the Stratford and District Labour Council? Good morning. Just a reminder, we have 20 minutes for you to make your presentation this morning, and it's up to you to divide that as you see fit between presentation time and questions and answers.

Ms Christine Greason: I want to thank the committee for giving the Stratford and District Labour Council the opportunity to present our views regarding this legislation on behalf of the 4,000-plus organized members and on behalf of the unorganized workers who don't have a voice. It's imperative that this committee know that we speak for all workers. I want to point this out because of the numerous calls that I get from workers in workplaces that do not have a collective voice. These people want to know how to get what is owing to them and what to do about unfair employers. I tell them that they need to go to the Ministry of Labour and get the employment standards division. It's hard to tell these people that I cannot fight on their behalf; I can only direct them. I'm saddened to see this kind of legislation that will make life and access even more intolerable for unorganized workers.

First, I want to say that I am very disturbed that this government would introduce this type of legislation without the prior input from the very people on whom it will have the most impact. Why would a government issue legislative changes without the slightest idea of what these workers will endure? I think you have to be in their place.

It is obvious that these are not just housekeeping changes that the minister would like us to believe. These changes will have a drastic and lasting effect on the workers that end up with unjust and unfair employers. What is really needed is to make changes to legislation that are tougher, improvements and better limitations so workers would not have to bear the brunt of the unjust employer. Instead, this government sees fit to loosen regulations and put the responsibility on workers instead of where they should be. This is not progression but regression.

Some facts on Bill 49:

Under Bill 49, employees will have six months to make a complaint instead of the two years. This means

that the ministry will only have to investigate back six months from the date of the complaint, rather than the two-year period, although this bill does allow, if there is proof of recurring violations or if the employer has violated several employees, to do an investigation and order back pay for up to a year.

The Ontario legal aid plan does not cover employment-related cases, and very few legal clinics will assist with employment-related cases. Workers who can't afford a lawyer will have to let their employer get away without paying their just wage or pay for work. I think my computer ate part of this one section.

The extension for appeal in an employment standards officer's decision is increased to 45 days from 15 days, which means an increase in the wait for workers to be without money.

Many workers endure hardships from their employers, especially in the areas of high unemployment. They cannot just tell an employer to take this job and shove it. Employers know that they have the upper hand in these periods of high unemployment and they know that employees are intimidated and will not take the chance of being fired, so it is put up and shut up or get out. This is the worst form of employer intimidation that is being enshrined by government.

Just for an example, a woman I worked with was making a good average wage of \$15 an hour until she was laid off. She searched for over a year for a job of any sort. She cleaned houses and she looked after infirm patients. She also worked making French fries just to make ends meet. This woman was educated also. She was a registered practical nurse. She had taken numerous courses to upgrade her skills and she had taken courses on how to start your own business and courses on marketing and computers.

I want to tell you that she is now working for \$8.25 an hour, and this job is on the afternoon shift and there is no shift premium. They work 10 hours a day and don't get overtime until they have worked 44 hours. The men in this workplace get \$2 an hour more, even though their jobs are not as skilled and less responsible. To top it all off, the employer sent around a letter to the employees thanking them for making \$120,000 more than was predicted with fewer hours worked, yet these people weren't even offered a dime, not even a thought of sharing in the good fortune that their labour made for their employer. This is the kind of thing that is going on in the real world and not in the world of common sense.

Just to elaborate on that point, when they discussed about going to the employer — I didn't have an opportunity to write all this in — about getting a raise or even a shift premium, because there are only certain people on the shift, four people on the shift and left with the responsibility, the people are afraid to say anything because of fear of losing their jobs, so they won't even go and talk about getting a raise or even getting a share of what they're making for the employer.

Putting a cap on the money that is owed to employees — I guess the government hasn't indicated what the minimum standard will be yet, when I wrote this anyway — is a gift for the employers and punishment on the employees that make these employers rich off the

backs of unorganized workers, as I pointed out previously, and of the most vulnerable in our society.

With this legislation, it is obvious that there are fewer options for workers when the ministry will not enforce the act in situations where they deem the violations may be resolved by other means. It seems this ministry is trying to reduce the number of workers who can to claim their rights under the Employment Standards Act. This legislation is forcing employees to either make a claim with the ESA or take their employer to court, but they cannot do both. I don't think that our law has ever allowed anyone to force an employer to pay twice for the same crime. This is going to be devastating to people who don't understand and end up losing everything and the employer wins again. This reminds me of sweatshops in the El Paso area, only because I had an opportunity to go there and talk to some of the women who work in those sweatshops.

The fly-by-night employers leave without paying their employees, and the employees end up having to look for and force their employer to pay their wages. These employees have to find their employer and get the law to get after them. It is this kind of climate we are creating in the province of Ontario.

The use of private collection agencies will increase the unstable climate that is being created by this legislation. The employees will be pressured to accept low settlements in order for the agency to get its share of the purse. There is no guarantee that contracting out collections to the private sector will be more effective and less costly.

Employment standards provide the basic floor for wages and working conditions for most working people in Ontario. Non-organized workers have come to the realization that the Employment Standards Act is weak and has numerous exclusions and loopholes that come to benefit the employer, and the employee can suffer the burden. Employers have found it quite easy to violate and steal from the workers who make profits for them. They know that only a few employees have the courage to lodge complaints. There are few workers who know what rights they have and how to access these rights.

Over 90% of complaints filed with the employment practices branch are by workers who no longer work for that employer. The ministry offers no protection for the worker against being fired for trying to enforce the law. These workers only get help to collect their termination pay. They don't get reinstatement.

It is estimated that one in three employers violates the basic employment standards, and these violations are widespread and conscious actions of the employer.

These cutbacks to the Employment Standards Act and the changes to other legislation under Labour Minister Witmer are to save money in the operation of the Ministry of Labour in order to finance the Tories' tax break to the rich.

If this government wanted to make genuine improvements to the Employment Standards Act, they would make it easier for workers to attain their rights under the act in a timely manner without the threat and fear of being fired, rather than making it harder by limiting the times for claims and limiting the amount that can be collected through an employment standards claim.

It is time in the province of Ontario to make progressive moves for the workers and not just the employers. The direction of this legislation takes us backwards. Is this the legacy that this government wants to leave for the children of tomorrow, that it's okay for the employers to make a profit at any cost, the American style of survival, everyone for themselves? These are not the kinds of workplaces and employers that I think the young people of today want to endure.

The key issues are very substantial changes, and this government should think again about housecleaning.

Forcing workers to choose between their jobs and their rights gives the green light for laying off staff of the employment practices branch; wipes out the floor of basic workers' rights for both non-union and union workers; caps the amount a worker can claim against an employer to \$10,000; sets an unannounced minimum amount a worker can claim; shortens the period that a worker can complain and leaves the ministry's slow time limit untouched; tells poor and low-income workers to go to work where there is no legal aid plan available to pay for a lawyer, and gives private collection agencies the power to negotiate a settlement which could be lower than minimum standards.

In closing, I would hope that with all of the information and the arguments that are being presented, this government will stop this attack on the poor and vulnerable people of this province and begin to make positive changes for the voters who had the confidence to elect them. These changes are not a positive sign for the economy of Ontario. Thank you.

The Chair: Thank you, Ms Greason, and that has left us just under three minutes per caucus. In this round, the official opposition will be the first to ask questions.

Mr Duncan: Thank you very much for your presentation. I do want to explore with you the very last sentence. You said "begin to make positive changes." Unions and workers' representatives have historically advocated that the act is not well enforced and has not been particularly effective as a statute, and I think worker representatives have also historically advocated for a rewrite of the act in that sense. What sorts of changes would you envision that might make the act or some successor act more effective at protecting vulnerable workers, number one, and number two, recognizing that there are limited resources available to governments today to do that?

1020

Ms Greason: I think that rather than going backwards with legislation that protects working people, there should be more emphasis put on the enforcement of what is already in place, therefore entitling employees who work in workplaces with unscrupulous employers to an opportunity to get what's owing to them, because money paid to workers is money being spent in the economy as far as I can see. Your second question was?

Mr Duncan: Just to perhaps rephrase it, the act, in my view, has not been well enforced.

Ms Greason: No.

Mr Duncan: It has not, in my view, been particularly good at protecting vulnerable employees. I guess the question all of us have to ask ourselves, particularly people who represent workers and who speak on behalf

of more vulnerable workers, is, what alternatives would we offer to the government? My experience has been that more officers don't necessarily translate to better enforcement, that there have to be some regulatory changes both at the federal and provincial level to do that. Do you have any specific ideas along that line?

Ms Greason: Maybe the government needs to take a stronger look at making sure that employers know that in the province of Ontario unscrupulous attitudes by employers towards workers will not be tolerated and that maybe a fine or a levy be implemented.

I know that even though a lot of the money that's still owed is probably from employers who flee or have gone bankrupt or what not, and is probably not traceable in some aspects, where those employees are going to be left to the welfare rolls, probably most of them, because of situations like that, that employers need to understand that they have an obligation if they're going to provide work in the communities, that they provide decent wages and that they make sure that they pay those wages, that they don't try and rob from some of those people that they are.

Mr Christopherson: Thank you, Ms Greason, for your presentation. I just want to note that I think that's probably the most succinct encapsulation of everything that's going on that I've seen yet. You've done an excellent job of boiling it down and making it very clear.

I want to go back to an issue I raised with the previous presenters. The government still insists that the move from two years in terms of a claim period to six months is meant to improve things and improve the turnaround time, and we've heard that thought supported by the chamber of commerce and, in fact, the presenter said it would prevent people from sitting around on their cans and mulling things over.

We heard yesterday in Hamilton from OPSEU Local 546, which is the employment standards officers' union representative, who said the following:

"The Ministry of Labour stated in the Expenditure Reduction Strategy Report 1996 to 1998 that by reducing the time frame to file a complaint, this would improve the turnaround time on investigating claims; in other words, a cost-effective and timely enforcement of employment standards. This is not true!

"The two-year time limit is a must for employees with the high unemployment currently facing Ontario. Employees would not complain to their employers of a breach of their employment rights in fear of losing their jobs. The majority of workers are not aware that a two-year limitation even exists."

Which of those two points of view do you believe is the accurate one?

Ms Greason: Employees who definitely feel intimidated are not going to go to their employer and lodge a complaint or even go to the employment standards and get what rightfully belongs to them, because of the intimidation factor.

Just knowing young people who are working part-time and working for minimum wage and what they endure as far as some employers that they deal with, just in a small community, because in small communities you tend to know everybody, and these kids are afraid to say any-

thing about their working conditions or the things that are going on around them because they want to keep their jobs. They have no idea what kind of legislation is there to protect them, absolutely none, because it's not in the education system. There is nothing there for them, unless they have someone they can go to who has some idea of background of legislation, but chances are they're just going to say, "There's nobody there that can do anything for me," and that's a lot of the problem.

Mr Christopherson: So your own experience in this community is one that supports what the employment standards officers themselves say across the province —

Ms Greason: Certainly.

Mr Christopherson: — that there are people who are afraid to make a claim and that the majority of claims are made after they've left their employment and that's why they needed to go back the two years, and therefore, this is a denial and a take-away of a minimum standard that now exists in the law. Is that an accurate reflection?

Ms Greason: That is exactly true, because a lot of people wouldn't even have any idea that there were some laws there to protect them, because they'd be in that situation. We send our children to school and we teach them things and tell them to get a grade 12 education, and they get out in the workforce and they don't even have any idea what laws are there to protect them. They have none. They're the most vulnerable in society also. It's not just the immigrants and new Canadians; it's our teenagers who are coming out of the system, and there is an awful pile of them.

Hon Mrs Witmer: Thank you very much. Certainly many of the concerns that you've raised, as you know, are concerns that have been around for years and years and years. The Employment Standards Act was developed in 1974, and since that time we've seen numerous amendments, we've seen the act become much more complex, we've seen it become more complicated, and at the present time, as you know, it's very difficult for employers, employees and even at times the Ministry of Labour staff to understand.

I guess I would ask you, given that these have been problems that have been ongoing for a long, long time, were you not disappointed that the former government did not attempt to provide the appropriate protection for vulnerable employees in this province?

Ms Greason: I do believe the wage protection plan that was at a maximum of \$5,000 for employees was implemented by the previous government and now it's been dropped to \$2,000 by your government, and I feel that that was a stepping stone in the right direction.

Hon Mrs Witmer: But do you also know that people in the garment industry, people in telemarketing, one third of people today in this province do not work in traditional jobs? Many of these people do not have appropriate protection under the Employment Standards Act. They, I know, wanted to have protection. In fact, when I was opposition critic, they wrote me letters, they wrote the government letters. There was absolutely no action to make the type of improvements to the act that you're stating need to be made.

Yes, there was one improvement in the EWPP, and that was it, and I think it's absolutely shameful that,

when the NDP had the opportunity to provide you with the protection you say you're looking for, there was no action done.

Ms Greason: But, Minister, can I just respond to that, because what your government is doing is regressive. You're talking about sweatshops and garment workers in the industry, and what your government is proposing under this legislation is even more draconian than the cleanup that the NDP was trying to do, the previous government. This is disgraceful to think that you could talk about the sweatshop workers in this way. I was with sweatshop workers in the United States who were having a hell of a fight down there. What our workers have to endure here — if we could ever round them up to let them know what their rights are in the first place, because that's the biggest problem is it's not ingrained in education. That's where we have a problem.

Hon Mrs Witmer: That's exactly what we are endeavouring to do. Our job —

Ms Greason: These changes don't do that.

Hon Mrs Witmer: Our job, and we are having a complete review of the act, will be to set the standards, and we're going to have a full discussion. Then we need to communicate those standards, and we're going to enforce. As you know, we are not now collecting money in order that we can appropriately reimburse employees in this province, and we're endeavouring to do exactly that.

Ms Greason: This isn't going to do that.

Hon Mrs Witmer: Part of the information —

Ms Greason: This is just paying lip-service to the whole problem.

Hon Mrs Witmer: — about the cap, there are 4% of claims at the present time that are above the \$10,000 cap. The majority of claims are below that. The average claim is for \$2,000, and the majority of people will still have access to the employment standards branch. In fact, if it's above \$10,000, you can still use the employment standards branch, but the amount that you receive will only be \$10,000, if that's your wish. Also, if your claim is above \$10,000 and it involves reinstatement, which means maybe it has to do with pregnancy or parental leave or your refusal to work on Sunday, the employment standards branch will deal with your claim even if it exceeds \$10,000. So some of the information that you've presented here is not totally accurate.

1030

Ms Greason: Why are you putting a cap on the \$10,000 if you're saying that there's only 4% of people who are collecting over and above \$10,000 anyway?

Hon Mrs Witmer: Because I can tell you, we believe that the public's money should be devoted to helping those most in need, and so we are going to deal with the 96% of claims that involve the most vulnerable people. The 4% above the \$10,000 are usually people in middle management positions. They involve wrongful dismissal. That's why we believe that we want to help the most vulnerable.

Ms Greason: If your government was actually concerned about the most vulnerable people in the province of Ontario, they would be asking for their input into what needs to be changed in the standards rather than going

ahead with an agenda of common sense which makes no sense, to say that they're going to help the vulnerable. You can't dictate to somebody else. That's like trying to tell a child, "No, you can't have that," "No, you're not going to do this," and "No, you're not going to do that," and expecting them to be grateful for it, because it ain't going to work.

The Chair: Thank you, Ms Greason. We appreciate your taking the time to make a presentation before us here today.

I'll ask again, in case they were out of the room at the time, whether the last group has a representative here, Central and Western District CUPE Council. Another spot wasted.

WORKERS REPETITIVE INJURY SUPPORT TEAM

The Chair: But I do believe we have a group. A group has very graciously offered to move up a spot, WRIST, the Workers Repetitive Injury Support Team. Thank you very much for helping us stay on schedule here. Ms Green, is it?

Ms Susan Green: Yes.

The Chair: Good morning, and again, we have 20 minutes for you to use as you see fit here.

Ms Green: My name is Susan Green. I'm the elected president of the Workers Repetitive Injury Support Team, Woodstock and area. I represent approximately 100 injured workers in Oxford and Middlesex county.

This is one of those pieces of legislation that seems to require an infomercial. Personally, I'm inclined to call it the Witmer Deal-a-Meal approach to employment standards, where you take this card and you lose these two, and you get this, lose that, and when you get to X number of points, you are done for your employment standards expectations between you and your employer. What a diet. Your employer wins with all kinds of built-in loopholes and escape routes. There is only one major flaw: It won't work.

I worked in a place several years ago now where the employer liked to take advantage of those who did not speak the language or knew nothing of how to pursue their rights or even what rights they had. I think that was probably the first qualification for any of the jobs at his business. All of his employees were either kids just out of school or new Canadians.

My employer had applied to be part of a program through the federal government where they paid a percentage of wages for hiring a female in a non-traditional job, but only for a limited time period. I was hired for that time period only, no more. My job was a non-traditional job. As a result of this job I was hired to do, I received the worst putdowns, jokes, insults and ridicule from the families of the owners and the foreman. The sexist remarks that were shared openly among them did wonders for my morale. I was open for pranks that endangered my health and safety on several occasions, things like loosening of clamps on sheets of steel that were suspended in the air, flipping up my welding helmet as I was welding, pouring water on the steel as I was welding, and the list goes on.

The other employees received racist remarks as to their country of origin and the colour of their skin. They also received the same sort of dangerous type of pranks. No one was left out, it seemed, and no one to complain to about the harassment. The truth was I needed the job or I wouldn't have stayed. I needed to gain more experience and complete more of my apprenticeship so I could get out of this environment. I could do nothing and still keep my job.

Workers' compensation claims were never filed unless you were a member of the family or a friend of the family. In the 12 months I was there, I witnessed several accidents in the plant. Some of them were the direct result of these pranks. Some were minor and some were serious. A broken arm and a severe facial burn received no compensation for lost time. As a matter of fact, both of these employees were terminated for lack of work, yet there were new employees to take their place within a week. But all was not equal. The foreman's son had an epileptic seizure while operating some heavy equipment. Forms were filled in and compensation was collected and he retained his job.

Our regular workweek was considered to be 48 hours per week each and every week. Most of our weeks averaged 55 to 60 hours per week. Even when we tried to schedule a weekend off, there were no guarantees we would get it.

One particular weekend, the last long weekend of that summer, I had asked for it off one month in advance. The Friday night of the long weekend, just as I was closing my toolbox, the owner approached me. He said there were some urgent repairs that needed doing. When I hedged about coming in, he threatened that if I did not come in on Saturday, "then don't come in on Tuesday." The irony of the whole thing is that on Saturday, when I did report for work, the urgent job was to do the brakes on his personal vehicle. He must have had complete trust in my personal integrity even though he had ruined my only vacation with my family for that entire year for his personal safety needs.

To top it all off, this owner had developed a method of stealing from his employees that had taken place for years. It was quite simple: overtime was just not paid. After I had been there a couple of weeks, I questioned the fact that no overtime was paid. First off, I was told that because they were an agricultural-based operation, they weren't required to pay overtime, but because of the owner's generosity, in lieu of overtime there would be a generous Christmas bonus, a type of profit-sharing. Your share would be equal to a percentage of your overtime units, provided, of course, you met all the other requirements. Profit-sharing for me that year equalled two chickens from the owner's personal hobby farm. This seemed to be hardly sufficient to cover one week's overtime, let alone the whole year.

My period of employment was finished. I had been hired for specific jobs in a specific time period and the federal top-up was over. I felt ripped off, abused and taken advantage of. I no longer feared losing my job; I didn't have one. I questioned the Ministry of Labour about this procedure and then launched a formal complaint. After several months of investigation, a cheque was ordered to be issued from my now former employer.

In order to get the money that was owed to me, I had to personally go to his office to see him by appointment. He would not mail the cheque. When I got there he sent his office staff to lunch. I was told that he felt cheated by my going to the Ministry of Labour and complaining and that I had better not ever expect to work again. He said he knew I was a troublemaker right from the start. He was very displeased by the fact that he had to pay his employees what was owed to them by him, and told me this in no uncertain terms in his now rather obvious displeasure bordering on rage. After all, we did get our Christmas bonuses and we should be happy to get that. I found out later from another employee who had quit because of the working conditions that this had proved to be quite a substantial amount. He had not paid overtime since he became an owner, and that was approximately six years.

If this deal-a-meal type of legislation was in place then, every other employee there would have been cheated out of their fair wages. They did not know their rights. They did not know where to turn to receive justice. Yes, I would still receive my rightful pay, but the others would have just got chickens probably to this very day. The only people to benefit from this type of house-keeping that is being done with Bill 49 are these same type of employers who exploit their workers knowingly and willingly.

These scenarios happen all too often and the people who are being exploited are not aware of their rights. Without strong legislation to prevent these ripoffs from occurring, without strong penalties for breaking the mockery of these new employment standards, the only people who lose consistently are the very people this legislation originally intended to protect.

Yes, there is a need for changes to the Employment Standards Act, but once again this government is letting the vast majority of the electorate down and feeding the coffers of the business community, making it easier for them to swindle the very people who help them earn their profits.

Capping the amount of what an employee was owed? Very questionable. I do not understand why this is even an issue. If the money is owed, then it should be paid — all paid, with interest, with heavy fines and penalties being issued to the negligent employer, especially if it was done intentionally. After all, they did make their profitable gains from illegal methods and out of the pockets of those they exploited. If they had been paying what they should have all along, the amount wouldn't be as high. It could never have reached the maximum. The employee rightfully earned the money and the employer committed theft by not paying — plain and simple.

1040

Bill 7, health and safety act, employment equity, Employment Standards Act, new directions for WCB, especially with the effects of each act interwoven with the others — I know the problems in the system. I see the results of these problems every day of my life: friends, members of WRIST, and myself. I deal with people, some of whom are so depressed that suicide attempts have been made, people who before an injury

had a totally different personality and a totally different life, a totally different set of everyday life's problems, not survival problems.

I implore you to search yourself. I'm not asking for sympathy for these people. I'm asking you to look hard at what this legislation is and ask yourself: "Do I want to create more of a problem than what already exists or do I want to start filling the gaps that are already there?" The people who have to deal with the problems, listen hard to them. Listen and learn. Then ask yourself this: Would Bill 49 do anything to help with the personal story I've enclosed for your reading at a later time? This is her life. She couldn't be here to make her submission. She's very upset right now. Please read and put yourself in the shoes of those already suffering from the gaps, or the shoes of the countless numbers of people yet to be hurt by these gaps that you now propose to widen.

The Chair: Thank you very much. That leaves us three minutes per caucus and this round will commence with Mr Christopherson.

Mr Christopherson: Thank you very much for your presentation. I want to stay focused on the issue of the circumstances workers are faced with in some cases, where they have an unscrupulous employer, where there is no collective agreement, where it's minimum wage or barely above that, few benefits, and people's rights are being violated.

It's important for us in these hearings to get on the record very clearly — I think there are a lot of people, and maybe some government members, certainly some of the presenters from the business community, who don't understand, to give them the benefit of the doubt, that this kind of world exists, and I think we need to make that case very clearly so that we can refute things like "people sitting around on their can mulling over." I don't mean that as a personal attack on the individual, but I think that's indicative of some of the thinking.

So talk to me a bit more about circumstances you know of and what it's like, in as clear a way, to paint that picture for people who think that's like an old, bad movie, that those sorts of things don't really exist.

Ms Green: A lot of the women I deal with, particularly the ethnic women, are in job situations where they can't complain. We have one particular business in the community I come from where the majority of their paycheques are picked up by their husbands. The women don't even see their paycheques. So they don't even have rights within their own home, let alone rights within the business community. The husband gets them the job. They are sent to work. They do their job. They have fears of losing their job. They have nowhere to turn.

Mr Christopherson: How rare are those kinds of things or is that —

Ms Green: This is the garment industry and in the garment industry it's quite common. We have three garment industries within Woodstock that I know of and it's quite regular that the husbands are there to pick up the cheques and to make sure their wives are at work, and just go to work and do your thing. The employment standards are gone. They're sweatshops. There are cockroaches falling off the ceiling all day. They make minimum wage. They work maximum hours and the conditions are not good.

Mr Christopherson: Would it be helpful if they had their rights posted in the workplace? Do you think that would be a start?

Ms Green: It would have to be posted in multiple languages and that would be a good start. They're not aware they're supposed to be getting overtime after 44 hours. They're not aware that their employers aren't allowed to harass them, and that can be sexual harassment, that can be anything. They're just not aware. They just accept it and go on. They don't want to lose their job. They can't afford to lose their job.

Mr John O'Toole (Durham East): Thank you, Susan, for a very impassioned presentation. I sense a very sincere line of commitment to this. There are just a couple of things to clarify your particular case. How long were you at this particular shop?

Ms Green: I was there for a year. Their contract with the federal government for top-up on my wages was one year.

Mr O'Toole: Would you say there are a lot of people in a similar situation, high turnover and that kind of thing, a year, around that?

Ms Green: Where I particularly worked it was seasonal work. They would bring them in at the first part of the spring and they would be gone by the end of September.

Mr O'Toole: It reminds me of, like you say, your case, a very vulnerable group of people. I want to get into the change in time limits, as I understand are recommended improvements to the Employment Standards Act and the motivation or reason for the six months. You said it very succinctly with the paragraph that starts, "If this deal-a-meal type of legislation was in place," etc. I really quite sincerely myself feel that the reason for the six months is to ensure that especially employees like yourself who are informed have a duty to protect their brothers or sisters.

Ms Green: But I wasn't informed until after I was out of that job.

Mr O'Toole: But you are doing that now, educating the people. You just go on to say — and again I'm doing this in a very sort of harmonious way. I really think that if you had employees more aware of the law — these public hearings will do that — and of their rights and they were quicker to bring them to the surface, there would be fewer employees receiving those chickens at Christmas. Really, that action and responsibility, rather than delaying it for two years and the persons who are coming in the door a year behind you, a year behind you, it doesn't do anything to improve the system, and the system today from the evidence I have, and I don't want to bore you, doesn't work. Two thirds aren't collected and very few of the claims ever get particularly registered in due process.

We're trying to improve scarce resources, focusing on those most vulnerable. I really sincerely want you to go away believing that's the commitment of the minister today. Do you not see that your duty you're doing today of bringing the issue to the surface quicker will improve the whole system's responsiveness to those kinds of workplaces?

Mr Christopherson: You didn't even want to hold the public hearings.

Interjection: We're doing it, though.

Ms Green: What I see happening is that the six-month limitation is a way to raise that quarter on the dollar. It's a way of chopping that in half.

Mr O'Toole: I don't want to get into a debate, but clearly in the act the initial intention is that all of those amounts owed would be directed to the employees' entitlement. The fees that were going to be charged by the collection agency would be over and above. The director would set a fee over and above that amount. If you read clearly in the act, section 28, you'll see that's the intention.

There are many cases where bankruptcies and going out of business occurs where you do anything to get a settlement, and in that case the employee, those persons with the claim, must sign off on that agreement. It's not just arbitrarily arrived at. There are provisions where it's clearly with the consent of the applicant.

I think there's a lot of rhetoric, and I for one at the end of this process, we want to certainly make improvements. The intent is not to give less. All throughout this particular piece of legislation, in the preamble, it says that the minimum standards shall not be diminished. In the case of where there's a collective agreement, today there are changes to what are the standards. Vacation is negotiated, time off is a negotiated item, overtime entitlements, hours of work, all of those things are part of a collective process. All we're doing is embellishing that and allowing unions, which like the United Steelworkers this morning are very well researched; they know what their internationals are getting. So have confidence and have faith and trust that we are really trying to make improvements.

Ms Green: In the six years that I was there — okay? — I was the first one, the first one.

Mr O'Toole: I thought you were there a year.

Ms Green: I was there for a year but in that six years of operation I was the first one. That employer went for six years without paying.

1050

Mr Pat Hoy (Essex-Kent): Thank you very much for your presentation. These types of presentations should impress all members of the committee as to developing a law that will protect persons such as yourself and others who have been victimized. I happen to know what can happen to your eyes if a welding helmet's pulled off. It's not just that a spark could hit you, but looking at welding can be very dangerous to the eyes whether you're struck by anything or not. So I understand how that could be.

You talk about awareness quite a bit. It seems that many employees are not aware of their rights, and they seem to investigate it as a last resolve. They want to keep their job, they simply don't know that they have recourse and they think it's normal. I've had people speaking to me about what they thought was normal, and it is not. So I understand your call for awareness.

The other thing too is that the government has said that 96% of the claims are under \$10,000. You said you were employed for a year under a federal program. Was that the maximum amount of time that program ran for an individual?

Ms Green: Yes, it was.

Mr Hoy: The employer went right to the maximum. The program was a year; he used it right there.

Ms Green: Yes.

Mr Hoy: So if we have a minimum put in place, is it possible that an employer would know this is only a maximum, in his view, of \$10,000, that it could be abused?

Ms Green: Oh, most definitely. They abuse what's already there. It's quite obvious, with the fact that we had this profit-sharing scheme that ended up being two chickens. They abused the system, clearly and succinctly. By putting the \$10,000 maximum, it's just another loophole, another escape route. The most they're going to pay is \$10,000 to one employee when they complain, not the whole group.

The Chair: Thank you again, Ms Green, for making presentation and for moving up and helping us fill the morning session.

WATERLOO REGIONAL LABOUR COUNCIL

The Chair: The next group making a presentation is the Waterloo Regional Labour Council. Good morning. Again, we have 20 minutes for you this morning, to divide as you see fit. I wonder if you folks would be kind enough to introduce yourselves for the Hansard reporter, please.

Ms Carrol Anne Sceviour: I'm Carrol Anne Sceviour.

Mr Mike Cooper: I'm Mike Cooper, chair of the political action committee.

Mr Bob Cruickshank: I'm Bob Cruickshank, president of the Waterloo Regional Labour Council, which supports 20,000 unionized workers in the region of Waterloo. I'm here on behalf of the Waterloo Regional Labour Council, and I'm pleased to respond to the minister's proposed changes to the Employment Standards Act. Unfortunately, I do so with little hope, as all too often we struggle to be heard, and even when we are, we wonder if anybody is listening. I might get better comments out of somebody than this guy in the wheelchair, I might be better talking to them, when I've listened to hearings with this Tory government.

Will anything we say convince the government to bring about substantial changes to a bill that clearly does not improve the Employment Standards Act, but benefits employers at the expense of the most vulnerable in the workforce, or will it merely be used as an excuse for consultation, where we express our concerns, nothing changes and the bill is enacted as it was originally written with all but a few minor changes?

Who are the vulnerable working people?

It's the person working as a painter for an owner-operated business whose employer reduces his wages because the employer does not agree with the time sheets submitted by the employee. The same employer provides no supervision and keeps records poorly or not at all.

It is the assistant manager of a hotel who has not had a day's vacation in three years and who received no vacation pay either, whose employer claims that he has been given all the vacation he is entitled to. The same employer keeps no records of vacation entitlement, provides no vacation statement to the employee and

admits that hotel work does not permit a vacation of two weeks together, in fact not even one week at a time but rather a day here and there.

It is the worker who erects fences for a contractor doing work for the Ministry of Transportation whose employer had an understanding that employees would get a flat hourly rate and a paid lunch break, but no overtime for hours worked in excess of 44 hours per week or in excess of 55 hours per week when engaged in work incidental to roadbuilding.

It is the worker in a riding stable who acts as a trail guide and performs other functions and for this receives a meagre payment from a company which claims she is not an employee, but is disciplined if she reports for work late.

It is the hairdresser who agrees to work for \$20 a week plus commission, but a lack of customers meant that the commission does not even bring it up to minimum wage.

It is the workers in a lumber yard whose boss has them sign a letter waiving their rights to overtime. The boss would simply adjust the workers' hourly rate to reflect the amount earned at a straight time rate.

You may think cases like these are unbelievable, that they are purely hypothetical, that it would never happen in Ontario, but they're all true. They are taken from the Ministry of Labour's public records, and in every case I've cited the employer appealed the decision of the ministry, insisting the worker was not owed the money.

How much money are we talking about? Is it \$1,000, is it \$100, or is it merely \$50? For some in this room, \$50 may not seem like much, but for others it's more than they make in a day. Remember, \$6.85 per hour is only \$54.80 for an eight-hour day.

Bill 49 gives the minister the right out to set out a minimum amount for a claim through regulation. Workers who make a claim below the minimum, which is yet unknown, will be denied the right to file a complaint or even have an investigation. So what happens to the workers whose employers refuse to pay them for a statutory holiday or for a few hours overtime? How often will the employer be able to get away with that?

If you think this will not happen, then consider the cases which were brought to the board under the existing legislation and consider what some employers will attempt to do under a watered-down version. Statistics from the Ministry of Labour's employment practice branch report state that in 1994-95 employers were assessed \$64 million, 74% of which was not collected. The most frequent reason given for not complying was the employer simply refused to pay. You've got no teeth in your bill — no teeth at all. You can't force anybody to pay if they don't want to pay. You ask how you can enforce it and you keep saying the NDP should have done it when it was in power. The NDP is not in power; you people are in power. Improve it.

As I said before, \$50 may not be much for some in this room, but for many in this province it's more than they earn for a full eight-hour workday. As you keep saying, you make an order to comply with that — you can make a court order and make them pay. All it takes is some of your lawyers to do the paperwork and you've got it done.

How many other cases are there like these that go unreported at a time when so many will put up with just about anything to get, if not to keep, a job, no matter how bad the job may be? People still define themselves by their job, because the job determines not only where and how well they will live, but their very status in the community. When have you heard someone say proudly, "I'm on unemployment" or "I'm on welfare"? Everybody needs a job, everybody should have the right to a job and everybody should have standards when they have that job.

Why does the government want to change the act as it exists now? Employers argue that they need greater flexibility in order to manage the workplace and improve their competitiveness. However, the existing act gives them an incredible amount of flexibility. It says 48 hours a week are the normal working limits for most workers in Ontario. In an emergency employers can make you work more hours than the normal limit. If your union agrees, your employer can arrange a regular workday that is more than eight hours long, a concession that many of us in this community have had to give to our employers to keep our jobs.

Employers can get a ministry permit forcing workers to work more than 48 hours in a week. When a company hires you, it can insist as a condition of employment that you agree to work a compressed workweek or excess hours. Coffee breaks or other rest periods are at the discretion of the employer. Many employees such as firefighters, home workers, domestic employees, janitors and farm workers have limited protection under the current Employment Standards Act in areas such as hours of work and overtime. The act as it presently exists is full of loopholes that favour the employer. Employers already have the right to contract out of the minimum standards of the act in exchange for a "greater right or benefit."

In the same way the employer operates a business, always looking for the greatest potential for return on every facet of their operation, they surely must understand that their own employees have the right to expect something in return for giving an employer increased flexibility in the workplace. Unfortunately in today's job market, some employers have the attitude, "Be glad you have a job, and if you don't want to work here, I can get a hundred others to do that." When an employer talks about flexibility, they mean using multiskilled workers and part-time or contract workers, to whom they can pay ever-decreasing wages to maximize their profits.

If an employer has a vacation entitlement that exceeds the act, does that mean he or she should not be entitled to pay for overtime?

If an employee has a severance package that exceeds the act, does this mean that he or she should be prepared to give up statutory holidays?

When is enough enough? While those in unorganized workplaces remain the most vulnerable, we in organized workplaces are also under attack with the amendments being proposed here today. I am tired of employers constantly asking for relief, claiming that we don't understand the realities of the new economy and the global marketplace with imports from low-wage, no-employment-standards-act countries. How is it then that

Canadian exports, many of which are produced by highly unionized workers who enjoy standards far above the statutory minimums, continue to be competitive in the global market? As well, why do the wages and working conditions of workers in the personal service sector have to be reduced? Dry cleaners, restaurants and cleaning services, for example, are not competing in the global marketplace since these services they perform cannot be provided offshore. Telling workers that they don't understand economical realities when they've experienced it on a first-hand basis, is unrealistic.

1100

Tell that to the thousands of our former members who are unemployed or underemployed, since we now have such lean and mean workplaces.

Tell that to Charlie MacDonald, a 43-year-old skilled tradesman who lost his job when the north plant closed in December 1992 and hasn't worked at his trade since because he's been told he's too old at 43.

Tell that to the employees of a local auto parts supplier who gave up \$3,000 in benefits and wages during a three-year contract and who haven't had a wage increase in five years. Are you listening, Mike? Incidentally, they produce more now with fewer employees than they ever did.

Tell that to Bob Eccles, a 30-year employee of the former Epton Industries, whose employees took massive wage and benefit cuts in 1983 so the company could survive. These wage cuts were not recouped until 1992. Despite the concessions given at the bargaining table and the infusion of government funds, the company closed in 1995. Requests for an inquiry have been ignored.

Tell that to the employees of Uniroyal Goodrich in Kitchener, who were forced to work a brutal continental work week so that the company could have continuous production. This continued for three years, resulting in broken marriages and lives, until the union convinced the company to change to a 12-hour core. Now employees get two weekends off a month instead of one — some progress.

We are tired of the rhetoric from employers and big business who claim that we do not understand the realities of the new economy.

Tell that to the 1,000 people lucky enough to get an application for the 50 jobs at Budd Canada this spring. There are many more who lined up overnight, only to be turned away. That's economy. That's the reality of this, and this act does nothing to help the workers.

The Chair: Thank you, Mr Cruickshank. We have just over two and a half minutes per caucus, and this time the questioning will commence with the government, Mr O'Toole.

Mr O'Toole: Thank you very much. This was very definitely a blow-by-blow description of what the last five years have been really all about. The current act that you've described for me is all the more proof that changes must be made.

Mr Cruickshank: Changes must be —

Mr O'Toole: But we're here today to listen to you for suggestions to make improvements to the act. That's the real issue here.

Mr Christopherson: After we forced you to have public hearings.

Mr Cruickshank: You were forced to get into public hearings.

Mr Christopherson: Don't be so dishonest.

Interjection: Oh, David, you're a hero.

Mr O'Toole: With all respect to David, he did fight that we have public hearings, but this is a two-phase process. The minister wants to make real change to improve the act, so could we have some of those suggestions?

Mr Cruickshank: You know, you keep going on that you can have a claim in six months and you keep going on about what the last government did. You're not doing any changes. You're making it worse. There's no question about that; you're making it worse. Six months to make a claim? Tell your business friends that they can't claim any money owing to them after six months. Tell your business friends that they can't claim any more than \$10,000. Why are you attacking the workers of this province? They'll tell you why: so you can give tax breaks to your rich friends, and that's the whole reality.

Here's a cartoon and, I'll tell you, this cartoon says it all about this government. Look at this. This government is getting patted on the head by God damn big business as you throw everything out — environment standards, every kind of standards under the sun you're throwing out, just to get a 30% tax cut.

Mr O'Toole: In all reasonableness, I'm an average person, a working person, as well. What I'd say to you —

Mr Cruickshank: What do you work at? Listen, you're playing to the people who are paying your wages.

The Chair: Order. You're sitting next to a former MPP. Let's have a little respect for the people who are in the current position. Okay?

Mr Cruickshank: Let them have a little respect for the employees.

Mr O'Toole: We're accountable at the end of the day. In four years we will account to the people. But I really want to make one point, that I think the changes we're making are for the very reasons you said. The economy right now is almost crippled, and you said that in your closing comments. The real economy is that there really are no jobs, and the jobs you mentioned, the restaurants, aren't controlled offshore. Those are the jobs that technically the students — people are retiring earlier and they're going back and taking other jobs. Retired people are contracting back to their original employers. There are many changes in the workplace. We need to work together to improve the standards and not to just have more of the same. To leave the act as it is would be a complete travesty and, I think you would agree with me, it doesn't work.

Mr Cooper: I think we should talk about credibility here. If you look at the previous government, on every piece of legislation that was brought forward by the New Democrats, your party filibustered, stalled, prolonged, made us go forever, and that's why we couldn't bring in new legislation. The minister was talking about, why didn't the New Democrats do it? It was because your party stalled on everything we wanted to do and we

didn't have time. We had more important things to deal with, such as getting this province back to work and fixing the 42 years of Tory problems that were created. That's why we didn't get around to doing it.

Talk about credibility. What have you done since you've been elected? You've killed everything that working people have tried to get. To sit there and say you're talking about protecting the vulnerable people, what did you do to the Advocacy Act? What did you do to Bill 40? What are you doing to the environment now? What are you doing to the tenants in this province? You are not protecting the little people and the vulnerable people. You're going out to try to make it better for the big, rich people in the province of Ontario. You're not protecting the working people at all.

Mr O'Toole: I think you've got to look at the number of jobs that have been created —

The Chair: Sorry, Mr O'Toole. The official opposition. Mr Duncan.

Mr Duncan: I want to come back to a discussion we had earlier this morning. I don't know if you were present. The government is trying to suggest that not only are they not harming the vulnerable workers, but they're also trying to suggest that somehow Ontario is just doing what everybody else is. On Monday we had a presentation from Professor Judy Fudge, one of the leading experts on employment standards in this country. I now have the Hansard transcript of that and I'd like to ask your views on this.

Making reference to the minister's statements about the minimum standards that they are proposing and how they compare to other jurisdictions, Professor Fudge said if any of her students had described the bill in this way she would have said it was negligent misrepresentation.

She goes on to state: "I want to look at three basic areas: the time limitation periods, the monetary cap and the privatization of collections....In British Columbia, you have six months from the termination of your employment to bring a claim, not from the fact of violation, and you have up to two years of money that you can claim. So this statement today" — and I'm quoting — "was perhaps misleading. So she should talk to her staff about getting proper training to read legislation in other jurisdictions. It's simply untrue.

"What this is, a six-month limitation period, is the lowest in Canada. In certain jurisdictions, there's no limitation period. In the federal jurisdiction, there's three years; in BC, there's two years; in Ontario, there's been two years."

My question to you is this: The government is trying to present an argument that somehow they are not lowering standards, number one, and what they're doing, number two, is not out of the ordinary. It's our view that (a) they are lowering standards, and (b) they are deliberately misleading the public about what this act is all about. Would you or would you not concur with that?

Mr Cooper: Of course we concur with that. I think what we're doing here and what this government's doing is a race to the bottom. What they're doing is taking the lowest standard. Their argument is that most of the provinces, or the majority of the provinces, have six months. That's what they're doing, they're racing to the

bottom. On every piece of legislation, they're going to the lowest common denominator.

That was one of the big things the labour movement fought a few years back on the free trade agreement, that we would be racing to the bottom. I think we're seeing that happen right now, especially when you're talking about environment and employment standards. We've got to compete with these other countries so we've got to go to the lowest common denominator.

Mr Christopherson: Thank you for your presentation, all of you. I think you've hit the nail on the head. It took till we got into the backyard of the Minister of Labour herself before all hell broke loose and we really got down to what this is really all about.

I also want to acknowledge for the Hansard that indeed former MPP Mike Cooper is a part of this delegation. Mike has an excellent reputation and a long-time record of standing up and fighting for the rights and needs of working people, and he continues to do that as a private citizen. I'm proud to have served with him in the Legislature and I'm proud to be with him here again today.

1110

I also want to comment on Mr O'Toole, who continues — and that's why I spoke out of turn — to try to take some kind of credit for listening to the people of Ontario. You are a government that passed the anti-worker Bill 7 without one day of public hearings, where you completely revamped the Ontario Labour Relations Act and did not invite the public. In fact, you fought off any opportunity for the public to have input. The only reason we're here today is because the NDP, with the support of the Liberals and the labour movement, forced you to come out and face the public. I find it insulting, John, that you would try to take credit for that, and I ask that you cease and desist from suggesting to people that you're pleased to be here. You're only here because you were brought kicking and screaming.

I also want to make note that in the presentation you talk about Epton Industries, and I believe — please correct me if I'm wrong — that's an example where the current Minister of Labour was under the gun because those employees wanted their full rights under the employee wage protection plan. The minister checked and found that it fit under the wire before her new regulation took place and she announced with great pride to the citizens of her community, "Don't worry; you'll get the full amount." When it's in her backyard it's good to have the full amount, but for the rest of Ontario workers, you can all live with the cutback amount of only \$2,000. I think that's hypocrisy in the extreme. I'd appreciate any comments you have on that, because I know that issue is one that rubs all of you.

If there's time left after you comment on that, I'd like to know what your level of faith is, because the government members have asked you to have faith, that when they do the second phase of their review of the Employment Standards Act, they'll make it better for workers. How much faith do you have they're going to do that?

Mr Cooper: For the first part, on the Epton Industries, the one thing the minister has consistently refused to do, and there have been a number of letters written to the minister on this subject, is have a full public inquiry on

why the place closed down and what exactly happened there. She still refuses to respond to that.

As for faith, I don't think anybody in the room has faith.

The Chair: Thank you all for coming and making your presentation here before us here today.

UNITED STEELWORKERS OF AMERICA, LOCAL 677

The Chair: United Steelworkers of America is our next group up.

Mr John Cunningham: Local 677.

The Chair: Oh, I'm sorry; it's not on our listing there. Local 677. Good morning. We have 20 minutes for you to use as you see fit.

Mr Cunningham: Thank you very much. My name is John Cunningham. I'll ask these two gentlemen to introduce themselves.

Mr Wayne Samuelson: I'm Wayne Samuelson. I'm a member of the local. I'm a former president.

Mr Cooper: Mike Cooper, chairman of the political action committee for USWA, Local 677.

Mr Cunningham: Thanks for the opportunity to speak today, Mr Chairman and committee members. I'm president of USWA, Local 677, representing 1,000 workers at a tire manufacturing facility here in Kitchener.

Bill 49 was portrayed by the current government as "facilitating administration and enforcement by reducing ambiguity," but this is cost-cutting with no sense of reality that could be attached, as it will increase ambiguity, not decrease it. The government was machiavellian in announcing the bill while the OFL was out of town, then feigning surprise at labour's outrage by saying that what was presented was merely technical amendments.

The government is trying to spear the labour movement in the side, but the insidious injury is to the unorganized. The government is selling off public assets and the rights of all working people.

With the promise of a review and restructuring of the act set for reading in January of this year, these are hardly mere technical changes but are the window dressing for the main event. In the Conservative government, no one said that the level playing field had to be horizontal.

On flexible standards, considering that each successive government has never encouraged compliance and responded only to individual complaints, to unionized workers this disregard of the prior floor of rights is a grave hardship, but to the unorganized it is plainly taking away basic rights which represent the most fundamental of working rights.

The "bad boss" bill allows the collective agreement to prevail over the minimum current standards. The government supposes that bargained rights confer greater rights when those matters are assessed together. The problem with such on-again, off-again legislation is that conferred greater rights are determined by whom?

Such a condition existed in the WCB act and was called "deeming." In Ontario, we deemed that permanently injured people could be parking lot attendants, never mind that few, if any, such jobs were real or occupied by

many people who were disabled before the word "deeming" was pressed into service. One can find the same redundancy in job programs where overkill is used to train thousands of meat cutters where several hundreds of projected jobs may exist.

Employers will ignore the floor of rights, overriding the legal standards of overtime, hours of work, public holidays, vacation pay and severance pay, and the future of common work standards of lighting, heating and safety are only a step away from being gutted.

Some will ask, "Where do you find such an example of minimum standards that adversely affect the workplace?" In 1991, our employer shut down the Strange Street plant, throwing 1,400 people permanently out of work. They informed our plant that if we didn't open up the contract in midterm, turning from a traditional Monday-to-Friday to a continental schedule, they would close our plant too. In 21 days, under the gun, we voted in new hours-of-work standards. The company ignored the contractual ability to schedule weekend crews and this brought disaster to our people.

That schedule brought marital and family breakups in vast numbers. It brought stress and mental breakdown to people in every shape and size. How did hours of work do that? It did it because we only had one weekend in four and worked 56 hours straight before a day off. We worked seven days in a row, rotating between three shifts. No legal definition can hide that skilful manipulation of what a workweek is to sanitize it for general public consumption, to make it sound more harmless. This did not allow people to participate in society in any meaningful way, and the company refused to recognize the suffering because we were open for business.

Conferring greater rights is an issue of apples and oranges. Our local signed a document that "both parties agreed to resolve each issue in a manner consistent with cost parity to the previous eight-hour schedule," after forcing the company to a 12-hour shift in 1995. The problem is that our corporation can only recognize money as a cost and cannot and will not recognize the human cost that is so important to all workers, unorganized and organized. Is that not how the public arrived at common standards in the first place? I guarantee that employers will hold out dollars and cents as a meaningful standard, without even seeing that oranges nurture working people far beyond a cost. Since 1991, my people have learned that there are many things far more important than the almighty paycheck. In 1991, the minimum employment standards didn't save our people. What would have been the demands from the company if they had been able to "confer greater rights"? Would we have ended up working 64 hours straight? What is the human cost of being open for business at anyone's interpretation?

The government keeps stating that the key to all labour relations is internal self-reliance, yet it keeps on stripping away any legislation that may have given powers to mandated self-determination. If employer groups and the governments have not recognized that a huge inequity of power lies on the side of the employer, as a president of 1,000 members, rest assured, you have the upper hand. Self-reliance only comes with powers that are equally mandated.

The flexible standard, which is an oxymoron in terms, will not bring labour peace to Ontario. With everything on the table, the chance of settlement in our plant is much more unachievable and damn near impossible for the newly organized small service or retail workplaces. Where's my local's refund for doing your government's job?

The very essence of a government is to produce and enforce standards or laws for the good of all, not just the recognition of cost to business. There is a basic cost of doing business which cannot be avoided unless this government believes that corporations come before the basic essentials of life. Harris has wanted labour unrest and the authors of this bill are providing that atmosphere, where change and the erosion of minimum entitlements are the rule. The result is a diminishing standard of life and working conditions in Ontario, which spells unrest.

Those who drafted the bill should recognize the need for minimum standards that our old act provided and absolutely alter Bill 49. Local 677 stands in opposition to the bill as a whole.

On enforcement: The disappearance of enforcement and investigative powers of the Ministry of Labour is an abdication of power. The cancellation of the grievance settlement officers program is a sad example of a success being overlooked for a few dollars saved. The GSO program was hailed by both company and union alike and truly brought labour peace.

Bill 49 requires that all employment standards complaints be taken through the grievance procedure. Local 677 has, on average, 175 grievances a year with an average of 15 cases that proceed to some form of arbitration. The company can currently fire someone and it can take as long as a year and a half to arbitration to receive a written judgement. Arbitration costs can run as high as \$70,000 per year. People lose homes and families in the interim on unjust discipline.

1120

Now that we have the extra onus of representation and must arbitrate, who will pay or absolve my local of the costs of a "bull in the china shop" employer? They flagrantly inform us they will do as they please and suffer the legal fallout at a later date. This is simply opening our contracts. The contract is between the employer and ourselves, and you overstate your purpose and powers. Contract language is built up over many years, and to deem the whole of the Employment Standards Act into all contracts demonstrates either your ignorance of the collective bargaining process or your continual lust to bring workplace unrest and violence to Ontario.

Enforcement is intended to be a privatized deal. The private sector enforcing public legislation, instead of by tender, should private enforcement personnel be elected like sheriffs in the United States? Not. We as Canadians depend on the government to supply enforcement of legislation, not to hand it to the very people we wish protection from.

Arbitrators now make rulings that the employment standards officer rendered in the past. In the abstract, arbitrators are not bound by the maximums or minimums of the act, yet are lacking the investigative tools of former ESOs, which is sure to aid the employers seeking

to disguise actions or schemes aimed at getting around the intent of the act and regulations. Where does the union get that information from? Must we subpoena and probe where the government would not or could not?

Enforcement for non-unionized employees: The old act was based on "what an employer owes an employee is to the most part what the employer had to pay." If you try through Bill 49, with maximums in place, you cannot seek full redress through the courts and could face lengthy legal wrangling, huge expense. This is still a loss of a civil right. If people cannot afford an avenue because of the barriers in front of an avenue, it's still a loss.

Filing within two weeks for the act or civil law is clearly unrealistic and a sham. If we suddenly fired every person in this room today, do you really think that you could know the three or four acts necessary to understand your rights and make a competent decision in two weeks? If you answer yes, you are a lawyer or a serving politician who shouldn't be allowed to answer in the first place. This is plainly putting handcuffs on the most vulnerable in society. Local 677 stands opposed to the manipulation of all workers through Bill 49.

Maximum claims: The maximum of \$10,000 is to the employer's advantage, and clearly many workers are owed wages for long periods of time totalling more than \$10,000. Many cannot afford lawyers when there is closure or dismissal involved, and this stimulates the worst employers to breach any or all standards.

Stop hiding in the bush. Spell out the proposed minimum. Please admit that minimum will be an asset to bad employers who can keep their violations contained under a six-month period to evade any legal penalties.

On the use of private collectors: Private operators have the power to collect amounts owing under the act, taking away the power from the MOL's employment practices branch. The ministry has always said that its problem in collection or enforcement of standards has been the employer's refusal to pay or play fair. The present government's continuing answer in all bills and action is to absolve itself from liability or responsibility. The government — whether Bill 49, the omnibus bill, Bill 7 — will absolve itself and leave unions and all Ontarians to the business wolves. If you don't want to govern because of the costs, get out of the counting house. Companies should also recognize and have their eyes open to the fact that Bill 49 will mean substantial increases in the cost of their negotiating and operating of their businesses.

The fee of the collector may be more than the amount to be collected, including seeking the approval of the director where settlement is under 75%, thereby allowing suspect discretionary powers with other people's money. Those under the poverty line may have to pay a fee to a collector. Are there no ethical questions to be raised by the authors? People are not commercial transactions. Public enforcement is desirable and must be preserved, and if it is lacking, then let's improve on it.

In the same manner, the government has reduced payments to WCB claimants on the perverse theory that if no money is available the injured will heal quicker. Bill 49 reduces the earned and owed payment on an equally perverse theory that paying money owed to

workers is an unfair barrier to thriving business in Ontario.

Local 677 is gravely concerned that employees, particularly the most vulnerable, will be pressured to agree to settlements of less than the full amount as collectors will argue, if only for reasons of expediency, that less is better than nothing.

On limitations: Bill 49's proposed amendments changes a number of periods in the act. Most damning is the changing of the old two years' to six months' back pay from the time of filing. Complaints are usually filed only after the employment relationship is severed either by quitting or changing employers. This is a major restriction for workers denied their rights for a longer period of time and who can't afford civil litigation.

Workers who fail to file must take their employers to court. In contrast, the ministry shall have two years from the day a complaint was filed to conduct its investigation and another two years of enforcement of the payment of moneys owed. Added up, this means waiting up to four years for moneys being paid that are owed, minus collectors' fees. You must be Hood Robin, who robs from the poor and legislates to the rich.

Lesser, positive amendments: Local 677 does give credit for the amendments of entitlement for a vacation for two weeks per year which will accrue whether active at work or absent due to illness or leave. Many locations are ahead of Ontario, and this is catching up.

The pregnancy and parental leave amendments that accumulate seniority while on such leave are long overdue. Parental leave is an empty promise if both parents are working, as the woman certainly needs the full-time payment, if so desired. However, minimums are more desirable, as spoken to before, than the lack of any standard.

In summary: There's a great, obvious need to maintain basic standards that apply to all those employed in the province of Ontario. Allowing employers to be all over the scale on areas of hours of work, overtime pay, vacation pay, severance pay and public holidays is not the same as being open for business. Local 677 has felt the sting of standards that are far too forgiving to business interests. We have felt working 56 hours in a row at straight time. We have felt the separation of family at public holiday time. We have felt the outrage at an employer who avoids a proper overtime payment at a greater cost than the cost of the overtime itself.

We fear more for the unorganized, the most defenceless in the workforce. We fear for the worsening quality of life for all Ontarians, because as they suffer so shall we suffer.

You can't allow all to negotiate lesser differences in standards. You set them and they stand or fall on their own. Rights are not rights if you can't access them; they're illusions only. Enforcement is not enforcement if collection outweighs the award. Government is not government if you are not responsible for your actions or your legislation. Thank you.

Mr Duncan: First of all, thank you for your concern about unorganized workers. I know that has been the tradition of the labour movement in Ontario.

One very quick question struck me. In your brief you said, "Companies should also recognize and have their eyes open to the fact that Bill 49 means a substantial increase in their cost of negotiating and operating their business." I wonder if you can illuminate that a little bit and tell us what you mean by that.

Mr Samuelson: Just to get it straight, you're asking?

Mr Duncan: You had said in your brief, "Companies should also recognize and have their eyes open to the fact that Bill 49 means a substantial increase in their cost of negotiating and operating their business." It strikes me as being very true, by the way. I wonder if you could tell me how that might happen.

Mr Samuelson: I think it's symptomatic of the actions of the Tory government. The "bad boss" bill, for example, puts in place a system where you create uneasiness. You create a situation where people are forced into confrontation. It's symptomatic of exactly what we've seen since the election of this government. You need only travel around this province with your eyes open and you'll see confrontation. You'll see in workplaces workers who are forced into fighting for basic rights. Now you bring in a piece of legislation, for crying out loud, that forces more workers into situations where they can't seek justice.

Frankly, if the government was interested in really looking at ways of bringing about some kind of fairness in the workplace and dealing with some of these problems, it would be prepared to sit down with workers and listen to them. But the "bad boss" bill is an example of workers having rights taken away from them. It creates uncertainty, it creates tension and it ultimately creates instability in the workplace. That brings about added costs.

Mr Christopherson: Thanks very much, John, for an excellent presentation. It really is quite well done and proves the point that humour, when used properly, can be a very powerful tool. I think you've done that. That's really a good brief.

I'd like to raise one issue with you. We had representatives from the OPSEU local that represents employment standards officers come forward and raise a number of issues. They said, and I'm quoting from their document regarding the minimum standard — I think you raise it in your document — "Employees that handle cash, for example, such as waitresses, waiters, gas station attendants, cashiers etc, every six months an employer could automatically deduct \$50 from an employee's paycheque for cash shortages" — that's assuming it's a \$100 minimum, for example — "twice a year. The employer could purposely violate the law by deducting moneys under the minimum amount every six months — a new double standard for the employer, an outright licence to steal." What would you say to that suggestion?

Mr Cunningham: Absolutely. The reference to 56 hours in a row that I was making was that if you have a legal definition of a workweek running Saturday to Saturday or Monday to Monday, as long as you group or cluster your hours of work around that dividing line, which is an imaginary line only in legislators' and lawyers' minds and not a reality on the floor, you can manipulate the workplace. Did we need that work

standard? Yes, we did as a minimum. Do we need an improved work standard? Yes, we need a greatly improved work standard that wouldn't allow what is taking place. Stated as a law, you couldn't do it, but if you manipulate the law you in fact can do it. Yes, very much so.

1130

Mr Baird: Thank you very much for your presentation. I would just like to get maybe a few comments and what not on the record. One of your presenters, Mr Cooper, mentioned that there was no time to present a full review of the Employment Standards Act to the Legislature. My office has just checked. The last year the NDP government was in power the Legislature of Ontario only sat for five weeks. There was certainly plenty of time to do it, but they didn't, because the Premier of the day had said he didn't want any more labour legislation. Of course, that information is on the public record with respect to the schedule of the Legislature.

You mentioned very briefly the collections. We're not satisfied with collecting 25 cents on the dollar. In 1993, the previous government disbanded the collections unit and displaced 10 employees in a cost-cutting initiative. My colleague the member for Windsor-Walkerville mentioned Professor Judy Fudge's statement. She mentioned in her brief that it was dissolved in 1995, but the fact remains it was dissolved by an NDP government. We saw the recovery rate go down to 20% and 15% the year after they did that. It got demonstrably worse, and it was directly attributed to the NDP government's decision to disband the collection agency and discharge those employees. It's very important to get that on the record.

We feel that bringing in private collection agents will do a terrific amount so the workers get more of their money, and that's incredibly important to put on the record. We're not satisfied with 25 cents. If we make a few little tinkering changes, we're not going to get the results. The previous two governments tried, to their credit; we have tried. It's simply not working. We need a major change.

We think every worker is entitled to every single dollar. The previous two governments have signed deals with employees if they've consented. All three parties have done it, said: "Listen, we can get you 80 cents on the dollar now. Would you accept that, as the worker?" The NDP did that; the Liberals did that; we've done that. We think the 25 cents on the dollar is simply unacceptable and we want to try a different area. We'll be held accountable for that. If we're not able to collect more money, we'll be held accountable for that. But we're not prepared to accept 25 cents on the dollar; it's just unacceptable.

Mr Cunningham: May I answer that?

The Chair: Very briefly.

Mr Cunningham: First of all, Mr Cooper hasn't made a statement today, so you're trying to make political hay while the sun isn't shining.

The Chair: Excuse me, Mr Cooper did make a statement before you came up here.

Mr Cunningham: This is my representation. First of all, this local will come to take on any government in power, not just the present one. I am here on my vacation

without pay. I've driven from Kincardine to present this and I could give squat less what government is in power. The legislation that you have presented is terrible for the people of this province. So don't make hay while the sun isn't shining here. It has nothing to do with what party is in power; it's the bill that you've written and the bill you've presented and its effect on the working people of this province. That's it. The collection, with minimums and maximums, is not full dollar.

The Chair: Thank you very much for your presentation. I believe he was referring to Mr Cooper's comments, the previous speaker.

CANADIAN AUTO WORKERS LOCAL 4304

The Chair: Our last presentation of the morning will be CAW Local 4304, Mr Grosz. Just at the outset, I'd like to thank you as well for filling a vacant spot this morning and helping us better order our day here.

Mr Rudy Grosz: Thank you for allowing me to come to you and speak today. I am the president of our local. I represent the Kitchener Transit drivers and the fleet mechanics for the city of Kitchener. But I didn't come here to just represent them; I came here for myself. I was born and raised here in Waterloo and Kitchener. I grew up listening to my father, who was a Polish immigrant, telling me about how he got involved in trade unions before there were really trade unions. He was an organizer. He did a lot of things and he told me about them when I was growing up. I used to think: "Why did you do that? What did you do those kinds of things for? Why didn't you just stay on the farm where we were living and just work the farm? Why did you get involved in that stuff?" His one answer to that was: "I didn't do it for me. I did it for you."

I grew up in the 1950s and 1960s, and life here in Ontario was pretty good. I got married and had a family; got involved with a trade union for a little bit with the rubber workers, Local 80. I didn't like working in a factory, so I left that. I thought Ontario was a great place to be. I thought Canada was the greatest country in the world, I thought Ontario was the greatest province in Canada and I felt that Kitchener-Waterloo was probably one of the best places in Ontario to be. Like a lot of people who live here and work here, I didn't pay a whole lot of attention to what was going on because life was good. There were jobs. We had a fair amount of security. I didn't pay attention to the people who were out there making these things happen for me. My father was one of them. He's been gone for 25 years now and he can't see what's going on, but I do see what's going on.

I have six children. I have eight grandchildren. I'm not here for me. I'm here for them because the province of Ontario is changing and I'm not happy to see the changes that are going on. I see things that my father worked for disappearing, things that I didn't bother to take seriously when he was alive. I wish he was here now so I could tell him that he was right, because he told me these things would happen.

I became involved with Kitchener Transit about eight years ago as a bus driver and I started hearing things. People get on my bus and I like people so I talk to them.

I hear about employers who hire people at a training rate of around \$3.50 an hour, keep them on for 60 days, and then let them go and hire the next one, so their entire workforce is being paid \$3.50 an hour. "Why don't you complain?" "What for? Who'd listen? I need a job. If I complain, I'm out."

Then it hit my own family. I have a son who went through college, graduated top of his class as a chef from George Brown College in Toronto, got a job in Waterloo at one of the best restaurants, one where the minister herself eats, or used to eat. He was put on salary, worked 60, 70 hours a week straight salary; no overtime, no holidays, nothing; six, seven days a week. I said: "What are you doing this for? They've got to pay you." He said: "I can't complain. I'll lose my job." My son is a diabetic; has to eat regular meals at regular times; take his insulin at the proper times with the right food amounts. One day his wife called. He's married and had a baby. They were rushing my son to hospital. He almost died because he didn't eat properly during these shifts that he was working. Ten days later he went back to work to find out he didn't have a job. They didn't need him any more. They didn't even bother to tell him. He walked in and they said, "We've replaced you."

He went to the labour board and he said, "What can I do?" They opened a file that thick of employees who had complained about that employer and nothing was ever done about it. People complained but the employer never paid, and they won't because they're out of business now. The sign's gone. They've opened a new restaurant under another name, formed another company, and they'll do it to the next bunch of employees as well.

Now we want to reduce some of these things? We want to change them? No. We're going the wrong way. You want to improve? I think change is necessary. I think every government that's been in power in the last 15 years has let things slide. You want to change it? Tighten up on the enforcement. Don't bother taking stuff away. You've got the laws there. You've got the standards. You're just not enforcing the standards. When people come in and complain, don't make them wait two years or a year and a half, and then the company goes bankrupt so they walk away. Make the employer pay. When you find a bad employer consistently doing these things, charge him a premium, make him put money in a pot to pay for these workers. There are good employers out there, some who won't do these things, but most employers will push it to the limit.

1140

I work for the city of Kitchener; a good employer. The minute they heard that some of these standards might be changed, I was back at the negotiating table, even though I've just signed a three-year contract. They want to extend our work hours. They want to take away overtime benefits. They want to take what we call our spread time, which allows us to get paid extra if we're on duty more than 11 and a half hours. They want to take away our paid lunch. I guess now that you've withdrawn that part of the bill for the time being, in two weeks now when we go back to the table to talk about these things, they won't be bringing that up. But they will push to the limit, and we have to negotiate and we have to fight constantly to

keep the things we've got. You're not helping anybody when you start taking stuff away.

So I came here today to let you know how I feel as a person. As a union president, I want my members to have the best. I don't want to keep fighting every day of the week to keep the things we've got. I want to see the province of Ontario improve, not get worse. You have the power to make it work. I'm not here to represent one political party or another; I'm not attacking anyone in that sense. Any party in power has the power to make the laws work if they have the will to do it. Lately, we haven't had the will to do it.

The Chair: Thank you very much, Mr Grosz. This time the questioning will commence with Mr Christopherson. We have three minutes per caucus.

Mr Christopherson: That was a very poignant presentation; thank you. The one question that comes to my mind in listening to not just the problems you've outlined but where you think the solutions lie is your reaction to the fact that there will be at least 45 fewer employment standards officers in place as a result of Bill 49 and the financial reductions to the Ministry of Labour in terms of what that says to you about this government's intent, since you believe so strongly that the real answer is greater enforcement, not less.

Mr Grosz: If you take away people who do the job, then the job doesn't get done. It's that simple. If you want to move, which we do, 110 buses down the street, you need 110 drivers. You take 30 drivers away, you only move 80 buses down the street. If you want to handle claims, you have people to do it. You take the people away, you don't handle the claims, or you delay them, make them longer.

Mr Christopherson: What would you say to the Minister of Labour, who was here earlier, and those chambers of commerce which insist that Bill 49 does not reduce in any way the minimum rights that workers now have in the Employment Standards Act?

Mr Grosz: I believe they do reduce some of the rights they have — the limits that are there, the minimum limit, the maximum standard, the time frames.

Like I said, my son, when he was working, didn't complain because he needed the job. He had a wife, a small baby, he was trying to make a reputation for himself. It was his first job after graduating. He needed the work. That was one of the top restaurants. If he had lost that job because of complaining, he would have been blacklisted, which he ended up being, in this community, anyway. He ended up going to another community to get employment because they put the word out on him: He's a troublemaker. He could not get a job in his field in the region of Waterloo.

Mr Christopherson: How many people, or even a general description, are in a circumstance where they're likely to be afraid to make a complaint to the ministry for fear of reprisals, up to and including losing their job?

Mr Grosz: Probably a very large number. Even though we have a union where we are, we have people who will not complain for fear of losing their job even though we've assured them the union will protect them for doing it, and they still won't complain. So what about all the people in Ontario who are not unionized, in small

industry and small business, where there are seven or eight people working?

Where my wife works there are seven people and they're treated like dirt sometimes, some of them in there. They never complain because it's the only job they've got. You look at the want ads, you go out and there's no much out there, so they keep what they've got and they put up with it.

Mr Joseph N. Tascona (Simcoe Centre): Thank you for your presentation. I appreciate your sharing your story with respect to your family in that particular restaurant because throughout the hearings we've been finding employers have been using bankruptcy and insolvency as a shield to get around the enforcement of the Employment Standards Act. That's one area that we don't have any control over, which is bankruptcy, in terms of protecting workers with basic rights and making sure that the system in terms of getting full wages for the work that you've put in is protected.

Nothing has been done. That act has been reviewed and they were supposed to have done something, but they have done nothing. It ties our hands in terms of saying, "How can we attack insolvent employers?" In fact, we have very limited methods of doing that other than going after the directors. That's a very difficult task, but it's been done. There was a recent case on that in terms of collecting for workers, but it took six years to litigate that case. But that doesn't protect the workers who are in the type of industries like restaurants and garment shops etc. That's one area that I think has to be noticed and I hope my friends are aware of that.

There's one other area, since you're involved in negotiations. Currently, under the act severance pay is a standard that can be contracted out by the union when they want to negotiate for their workers. Do you have severance pay under your collective agreement?

Mr Grosz: We haven't because we've never had a bus driver laid off in the city of Kitchener in the history of Kitchener Transit. Thanks to the transfer payment cut-backs from the government to the city of Kitchener of \$1.5 million next year, we're looking at maybe 30 layoffs and we'll have to negotiate it now. That's why we're at the table.

Mr Tascona: But that's something that is contracted out. In other words, unions have the right to contract out of the Labour Relations Act to get the best deal for their workers. We've had some comments on that from other presenters with respect to plant closures etc and they are aware of that, but it's something that is not objected to by unions. They in fact have welcomed it, to be able to negotiate severance pay and contract out of the legislation to protect their workers.

Mr Grosz: The unions can do that. What about the people who don't have unions?

Mr Tascona: That's exactly right, but the thing is this is a standard that has been contracted out so to take it beyond that, it's not something that's new for unions to be able to protect their workers where the standard is not a minimum, and severance pay is one of those areas. We're looking at extending those in certain areas and that's been pulled now, but it's not something that's new, so I wanted you to be aware of that.

Mr Hoy: I appreciated your presentation this morning, the personal knowledge that you have of certain actions taken against particularly your son. We've only been on the hearings for the third day now and it's apparent that the act is going to need some amendments.

The government likes to talk about bankruptcy and I'm not suggesting that this is going to solve or is even maybe part of Bill 49. But I want to talk about bankruptcy for a moment and what the farm sector did in bankruptcies where grain elevators went bankrupt and there was no grain in the elevator or, as often is the case, the farmer was the last creditor. The farm community began a checkoff system whereby a few dollars per ton, or whatever the figure might be, was subtracted from their paycheque in order to protect themselves from those who went bankrupt.

It's that kind of innovative thinking and agreement among parties to take a certain action. We'll be looking at constructive amendments to this bill. I'm not suggesting that what I just mentioned about what the farmers' reaction was to bankruptcy would be any kind of an amendment that we would think of; I'm just saying there are people who have constructive ideas on how to maintain the importance of workers and the worldwide renown that Canada and Ontario are the greatest places to live.

The Chair: Thank you, Mr Hoy, and thank you very much again, Mr Grosz. I appreciate your taking the time to make your presentation here today.

With that, thanks to the two presenters from the afternoon who accommodated us this morning, we will amend the schedule and the committee will recess and return to this room promptly at 2 o'clock. The committee stands recessed.

The committee recessed from 1150 to 1400.

GUELPH AND DISTRICT LABOUR COUNCIL

The Chair: Welcome to all those in attendance for our afternoon session of the third day of hearings on Bill 49. Our thanks to the Guelph and District Labour Council for accommodating a slight change in the sequence. If you could come forward now, you have 20 minutes to divide as you see fit between presentation time and question-and-answer period.

Mr Clarence Boulding: My name is Clarence Boulding from the Guelph and District Labour Council, and this is Carol Hall, our financial secretary. I want to apologize, first off, that we've only brought 10 copies of our submission because of the cost. We find it improbable that people that don't have a lot of financing should be able to afford 30 copies and the cost that goes into it. It would be nice if there was some other way we could do it.

Another apology is that at the time we wrote our submission we didn't know that flexible standards were going to be withdrawn from Bill 49. We would appreciate being able to read our notes as written.

On behalf of the Guelph and District Labour Council we would like to thank this committee for the opportunity to hear our views on Elizabeth Witmer's minor house-keeping changes to the Employment Standards Act. It is not often enough this government holds public meetings

so that the people of this province might have a say in the many changes imposed by the Tories. Unlike some others, we believe our democratic rights do not start and end at a ballot box once every four or five years. So we are pleased to be here.

Real progress only takes place in a society when there is compromise, and this present government in its pursuit of appeasing its private enterprise constituents has showed no compromise, no compassion, nor anything less than contempt for anyone with a different view than that of their own.

It should come as no surprise that the GDLC is opposed to almost all the current proposed changes to the ESA, the Employment Standards Act, considering we represent those in society that are sometimes exploited, often mistreated, and do not have the education or resources to help themselves. Our initial response is that these proposed changes will not improve basic employment rights, and over the course of our presentation we hope to show you why.

Our main focus will be flexible standards, which have been withdrawn, and enforcement under a collective agreement, as well as some brief comments on other key amendments.

It should be noted that the GDLC represents some 5,000 members of public and private sector unions in the Guelph area.

Flexible standards: As someone who has negotiated collective agreements on behalf of the membership of Canadian Auto Workers Local 1917, unit 2, the proposed changes under flexible standards hold ominous challenges for collective bargaining. In the past it was never necessary to include the ESA's minimum standards in the collective agreement. We had only to negotiate those conditions that exceeded the ESA. Right now, it is good to know that, even if no gains can be made at the bargaining table, members will at least be protected by a minimum standard that is the same for all workers in their particular sector. Bill 49 will change all that.

Bill 49 allows a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay if the contract "confers greater rights...when those matters are assessed together." This measure erases the historic concept of an overall minimum standard of workplace rights for unionized workers.

Even though Bill 49 allows tradeoffs on these standards, what could possibly make up for a parent who misses coaching their children's baseball game because, for example, they are forced to work overtime? The current minimum standards, even if abused from time to time, must not be for sale, because there can be no fair trades in minimum standards. As people involved in contract negotiations, we can say that three-year agreements like the one we have now in my workplace will probably be a thing of the past. The membership will not want to tie themselves down for fear of being stuck in a detrimental tradeoff position. Imagine collective agreements with terms of three to six months so the union can be sure that the employer's demands aren't too unrealistic for its membership, bringing an end to a period of time of long-term stability for both employer and employee.

Under the proposed changes it is fair to assume that employers will want to make changes to every contract, especially to hours of work. Employers are always complaining about the high cost of payroll taxes and one way around that would be to have mandatory overtime, allowing companies to employ fewer people than they do even now and returning workplaces to the sweatshops of the early 1900s, forcing people again into long hours of work and more time away from their families.

Please don't allow the minimum standards to be negotiated. Workers will only lose the few rights that they have now. The potential of this amendment to erode the standard of living of the working class of this province is enough to make the GDLC stand in opposition to the bill as a whole.

Ms Carol Hall: Enforcement under a collective agreement: As union people representing the members in our workplace, we are appalled to see that Elizabeth Witmer does not seem to understand housekeeping in the real world. A broom is actually for sweeping the floor and not for destroying valuable objects. She is sweeping away valuable employees or front-line workers, if you will, who keep businesses producing. Paying a fair wage for fair work is indeed not unfair. We believe that Bill 49 will cause job layoffs. Employers will employ fewer employees, working longer hours to get their work done. This is not job creation; this is job cremation.

Bill 49 will make far-reaching changes in the enforcement under a collective agreement, the foundation of the basic rights of union and non-union workers in Ontario. Unions have fought for many years for fair wages, good working conditions and a means of representation. When this failed, the union worker, who is also a taxpayer, had the Ministry of Labour to represent them. Under section 20 of the bill, section 64.5 of the act, unionized and non-unionized employees will no longer have the security of working in a safe environment. Employees working in a chemical plant may suffer long-term illness if the employer deems that safety measures are not necessary. Sorters at a recycling plant may be injured on the job because job safety equipment will no longer be supplied. Workplace harassment may be condoned if the employer turns a blind eye.

There are few people who can afford a lengthy court battle. Workers are not lawyers. They are not aware of the many avenues open to them and find out by accident when it's too late. Bill 49 will effectively remove their rights to redress and compensation from their employers.

The government will make it feasible to fire anyone who stands up for their rights or complains about poor working conditions. The Ministry of Labour already has more complaints than an enforcement officer can handle properly. The Guelph and District Labour Council currently receives calls from workers who cannot contact the employment standards branch because the phone lines are constantly busy. We are being denied overtime pay, meal breaks, severance pay and are being forced to work excessive hours. This is happening now. Bill 49 will make the situation much worse.

General comments: High unemployment and a stagnant economy have pressured working people to turn a blind eye to poor working conditions already. The number of

complaints the Ministry of Labour gets now should be a good indicator that large numbers of employers are taking advantage of their employees.

Weakening the ESA will only make an imperfect system worse. Now is the time to be strengthening human rights in the workplace, not diluting them. The working men and women of this province deserve better than to be thought of as secondary to the higher profits of the business community.

These minor housekeeping changes also call for a maximum \$10,000 cap for an employee that files a complaint under the act. It offers private enterprise a chance to make a profit off the collection of money owed to a complainant. This will offer monetary rewards to the employer to drag out his abuse — the most he'll pay is \$10,000, less if he makes a deal with the private collector — rewards a private businessman with a chance to make a fair buck for collections. Indeed, these proposals will reward everyone but the poor employee, who will get shafted again because his government, the defender of the people, will not want to intervene on his or her behalf. Is this government so far from its constituents that the only individual's rights it's concerned with is the individual employer? We want the system of public enforcement to be maintained and improved.

Mr Boulding: In conclusion, with the exception of the proposed changes affecting vacation pay and those that affect seniority, service during pregnancy and parental leave, we find these proposals unprogressive. The Guelph and District Labour Council is an organization which is concerned with maintaining and improving basic societal standards such as hours of work, overtime pay, vacation pay, severance and public holidays. Bill 49 would eliminate the floor for these minimum standards.

We say this bill should be scrapped and another method found for cleaning up a government mess instead of putting it on the backs of the working poor. Since there is to be a major review of the act in the near future, we feel this provincial government shouldn't make any changes now but should be including all parties with a vested interest to make recommendations to the act as a whole. We feel that if government, business and labour come together in the spirit of compromise, the Employment Standards Act can be improved and it can be done without lowering anyone's standards or infringing on their rights. We'll just have to look further than the short-term bottom line.

Thank you, and we look forward these opportunities in the future.

The Chair: Thank you very much for your presentation, and that leaves us three minutes of questioning per caucus. This time the government members will be first.

Mrs Barbara Fisher (Bruce): We had an experience on Monday in Toronto of having a worker represent herself. She's not a member of organized labour and therefore came before the committee representing herself. It had to do with enforcement, and specifically in her case it was enforcement with regard to collection of outstanding moneys owing to her. During her presentation she was pretty adamant that in fact government got in the way of collecting on her behalf over the period of almost

two years and the outstanding debt of 180 hours worth of income still was not forthcoming. A single parent with three children, she was finding it very difficult.

1410

I think if we're going to address the problem in a reasonable manner, we have to put all politics aside and do what we all know is best, and that is work on behalf of the workers. In this case the question with regard to private collection was raised. Where the collection agents in the past have been let go and the merging of that responsibility placed with the current staff, we find that we're obviously short of being able to meet the needs of not only enforcing the Employment Standards Act but also the collections side of it.

Given that all parties within the provincial government in the past have been unsuccessful in collecting on behalf of the worker, do you not think it's reasonable that we can give it a chance here, that perhaps private collection could work on behalf of the worker? In closing, on that question, I would remind ourselves we're collecting about 25 cents on the dollar right now for those workers. Deals have been cut in the past by all parties while in government. She sort of felt we were in her way in accessing her rights to her collection.

Mr Boulding: First of all, my answer to that would be in the collection of outstanding money, I think we're all aware that any time an employee is owed money, in some cases it's because the business has gone out of business, in which case then the employee is always the last person on the list to get paid.

Second, if the government had some rules or some penalties for employers who didn't pay the money that's owing, instead of just saying, "That's right, the money is owed to this person and you have to pay," if they had any regulations and penalties to enforce those things, that would work a lot better than to allow a private collection agency a chance to collect. Because what are they going to use to collect the moneys owing, except for the fact that they might be able to negotiate a lower amount than what's duly owed to the employee in the first place, in which case the employer, someone who has bent the rules or abused them, is going to get off with less money than they really owe to someone.

Mr Fisher: But that's no different from today. Deals are cut every day right now with regard to getting those funds. It's not a new act and it's not a new practice. Right now, our workers are getting less than they're entitled to because those things are negotiated off right now. There just isn't a magic number. Do you think that's right?

Mr Boulding: What I think is right is that the Employment Standards Act and the Ministry of Labour have more teeth to actually penalize businesses, even if it came down to maybe pulling their licence for a year for not paying money that's owing to somebody. The point is here, the person that's going to lose — we want the Employment Standards Act improved, we want the Ministry of Labour improved, and that might take more people to do the job.

Mr Duncan: Just along that line of questioning, the member for Bruce did indicate that successive governments and the branch have been short of meeting the

needs. Do you think it was a good idea then to cut 45 employment standards officers at this time?

Mr Boulding: Definitely not. My wife herself has had a complaint with employment standards and it has taken 18 months for her to even have any response from the Employment Standards Act. When that person did call, with the letter that came to the house, she had 10 days to act on that, and if she didn't act within those 10 days she was going to lose out altogether. If it's taking 18 months for people to actually have their complaints heard, that's way too long. We do need more people there.

Mr Duncan: So given this, in your view, just because you're an observer, a labour leader, do you think the government is really acting to try to improve collection, or do you think it's acting to try to reduce standards?

Mr Boulding: I think they're actually acting to reduce standards. If they were really concerned about collection, they wouldn't have gotten rid of the \$5,000 wage protection program they had in place for workers who were owed money.

Mr Christopherson: Further to the issue you raise on page 5 about the phone lines, how long has that been going on, that you've been having trouble with the phones?

Mr Boulding: The labour council itself has always gotten calls from people asking about employment standards, but it's only probably been in the last six months that people have been complaining that they can't even get to talk to anybody because the phone lines are busy.

Mr Christopherson: Do you have documented cases of that, at least of people telling you they've been trying to do that?

Mr Boulding: Oh, yes. We have a message pad and continually there's messages there that someone is looking for information on employment standards.

Mr Christopherson: That's interesting. Just above that also, this is an issue we've been focusing on today, and I think more and more it's crucial in terms of the impact of Bill 49 on non-union members. You state: "The government will make it feasible to fire anyone who stands up for their rights or complains about poor working conditions. The Ministry of Labour already has more complaints than enforcement officers can handle properly." Do you have examples of circumstances that people have told you about?

Mr Boulding: Have been terminated?

Mr Christopherson: Or where they're afraid to say anything because they're afraid there will be repercussions.

Mr Boulding: I think most people who end up terminated or are working in bad working conditions just know that the way the structure is set up so far, it takes so long to be heard. So no one acts in haste and probably people are working and living with bad conditions right now only because they don't want to put themselves in a position of getting terminated by making a formal complaint to the Employment Standards Act.

I'm not the recording secretary, and the recording secretary couldn't make it today, but she's the one who answers the phone and takes all these messages. I'm sure she has — well, all of those cases would be people who

would be afraid. Actually, we do have a letter on file even from complaints from people that probably have been sent to the employment standards or they haven't sent the letter to employment standards.

Mr Christopherson: The reason we're focusing on it is because there's a real difference of opinion about why people don't file sooner in terms of lodging their complaint. What we're hearing is a great deal of evidence that there are people who are afraid to raise a stink in the workplace because they have no protection and they're afraid and they don't have alternatives if they're fired, either to get their job back or to find another job. There's a real question as to whether that's the reality or not. I just wondered what it was from the perspective of the labour movement in Guelph.

Mr Boulding: I think even in our brief we mention that the economic situation for working people these days is such that there aren't a lot of jobs out there. Someone who has complaints and knows that their rights are violated under the Employment Standards Act may let those go in lots of cases because they'll be terminated from a job, and jobs aren't easy to come by.

Mr Christopherson: So high unemployment, in addition to low rights in the law, makes for a great climate for the unscrupulous employers that are out there.

Mr Boulding: For sure, and we see Bill 49 as a "big boss" bill which will just allow employers to abuse and get away with even more.

Mr Baird: Could I have a point of order, Mr Chair? Just a concern — Mr Christopherson brought this up — to the people presenting. Page 5 of the brief says "the phone lines are constantly busy." This is a concern and I think it's valid. If you could provide us with examples, I'd be happy to look into it for you, because it is a concern and we would look into it. If you could provide the specific details of the times and the number you're calling, I'd be happy to look into it.

Mr Boulding: Who would you want it sent to?

Mr Baird: To me; I'll give you my card.

Interjections.

Mr Baird: Just give me the number.

Mr Duncan: On a point of order, Mr Chair: That line has not been working well for a very long time. We would like the government to provide us information with respect to how they expect service to improve when they're cutting employees from that branch of the ministry.

The Chair: Thank you both for taking the time to make a presentation before us here today. We appreciate it.

1420

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, FESTIVAL CITY LODGE 1927

The Chair: Our next group up will be the International Association of Machinists and Aerospace Workers, Festival City Lodge 1927. Good afternoon to you all. We have 20 minutes for you to divide as you see fit between presentation time and questions and answers. Would you be kind enough to introduce yourselves for the Hansard reporter, please.

Mr Charles Muma: I'm Charles Muma. I'm the president of Festival City Lodge 1927. With me are Darlene Dale, the chairman of our political action committee, and Michael Dale, who is an adviser we use and is also Darlene's husband.

Festival City Lodge 1927 is a member local of the International Association of Machinists and Aerospace Workers. We represent over 300 members of Dominion Controls. It's a company that builds parking brake assemblies in Stratford, Ontario. Making our presentation will be Darlene, the chairperson of Local Lodge 1927's political action committee.

Mrs Darlene Dale: Good afternoon and thank you for letting me speak to you.

The Employment Standards Act has been in need of improvement for several years. It has too many exclusions and loopholes which weaken its protection of Ontario workers.

There are several positive amendments in Bill 49. One such amendment is the entitlement to vacation pay. Under the proposed amendment, time lost due to illness or leave will still be used to calculate entitlement for vacation time. Second is the amendment that will ensure that all employees maintain benefit and seniority rights while on pregnancy or parental leave.

However, Bill 49 also contains fundamental changes to Ontario labour law by permitting important minimum standards to become negotiable. Prior to this bill, it was illegal for a collective agreement to have any provisions below the minimum standards set out in the Employment Standards Act. Section 3 of Bill 49 will allow a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay if the contract "confers greater rights" when those matters are assessed together.

This opens a can of worms. Since it is almost impossible to define a subjective term, it leaves the act wide open to interpretation. Such a large loophole will invite dishonest employers to skirt the law, leaving honest employers who wish to remain in business no alternative but to follow suit or leave for a jurisdiction where more predictable standards exist.

The vagueness of the bill also widens the scope of items to be negotiated, creating an environment that could lead to more work stoppages as unions and employers struggle through lengthy contract negotiations. The end result would be lowered productivity as both parties become engulfed in a war of tradeoffs.

Our contract is due to be negotiated next year and, as with most collective agreements, the provisions in the Employment Standards Act work as a bottom line from which both parties start their bargaining. Now let us suppose that there is no point at which to start negotiations.

For example, in division 320 of our plant, many of the employees have been working large amounts of overtime. One man was able to accumulate 40 hours of overtime in one week. The company could suggest a waiver of overtime rights for more vacation time. At the rate of 40 hours per week, the amount of overtime could reach 2,000 hours in one year. This amount of overtime would be too great to be compensated by vacation time in one

year and therefore could only be used against the employee's retirement date. The tradeoff is an exchange of a monetary right — overtime pay — for a non-monetary benefit of early retirement. For the purposes of Bill 49, early retirement could be seen as a greater right when assessed together with the rest of the contract. Is it?

We have all heard through the media the experience of the Japanese with overextended work hours. They have found that extending hours of work can contribute to heart attack, stroke and even death. If this were repeated in Ontario, our already overstretched health care system would be further burdened. If the employee suffers a heart attack because of extended hours of overtime to secure an early retirement, can this really be called a greater right?

Let us put another proposal on the table. Let's say a management team would like to help their employees maintain a good work record and reduce the number of people who have to be reprimanded or fired because of their attendance. They propose a system to use overtime hours to cancel out incidents: any unauthorized leave from work such as leaving work early, lateness or sickness. Eight hours of overtime at standard wages will cancel one full incident. On the surface, this proposal sounds very appealing. It could be considered a benefit for the people who are close to being fired due to the restrictions of the attendance policy: "All I have to do is work a little overtime and my job is saved." On closer examination, this benefit falls short. The employee has lost a day's pay through absenteeism and is now being asked to relinquish eight hours of overtime pay. In essence, the employee just paid the company four hours' wages to keep their job.

It may seem improbable that a company would offer such a formula to its workers, but a similar tradeoff of rights is being used in my workplace at the moment: "Employees may substitute one half day vacation in lieu of taking a leave of absence for specialist appointments etc, provided both half days are scheduled at the same time. Maximum of up to two single days per vacation year." This is taken from the Dominion Controls attendance policy, as appended to this document.

On the surface, this seems a reasonable deal. Employees may take vacation time in order to keep their attendance record within the allowed limits of 10 days in a two-year rotating window. The employee is asked to trade their right of vacation time to keep their job. Under this formula, a new employee with only two weeks vacation loses even more, as two days traded for doctors' appointments sends their allowed vacation time below the two-week minimum standards. Do they get time from work? Yes. Is it vacation time? Well, my idea of vacation time is not sitting in a specialist's office waiting to hear if I need an operation or cancer treatments. These employees are already owed vacation time by the company, and making them use this time up as a means of payment to the company for a job they already have is a glimpse into what awaits other workers in Ontario due to the change in Bill 49.

The government must believe that the provisions of the Employment Standards Act are not the minimum at all but more than the working people of Ontario deserve. If

the standards are truly considered to be minimums, it would be impossible for them to be reduced or compromised as a tradeoff for an increased benefit over and above another standard. It is the government's duty to set clear standards so that our society represents a level playing field for all. Both industry and labour will suffer under the proposed changes to the Employment Standards Act contained in Bill 49, but the big loser will be the Ontario economy, which, gridlocked in endless trivial negotiating between capital and labour, will lose its competitive edge in the global marketplace. I implore this committee to reject Bill 49 as it now stands and to urge the government to work together with labour and capital to reach a truly equitable revision of the Employment Standards Act. Thank you.

Mr Duncan: Thank you very much. This theme about the economic cost of these amendments and how it's going to impact on collective bargaining and what it will do to the investment climate in Ontario is one that is emerging in terms of union presentations. We're hearing this from different organizations. Your view then, just to make sure I understand it very clearly, is that the sections of the bill that pertain to flexible standards, if they come forward with them in their second round, and also the notions around arbitration and so forth in the bill, will ultimately cause unions, number one, to negotiate contracts that are shorter in length; number two, make those negotiations more difficult; and number three, in your view, result in a situation where collective bargaining is slower and more confrontational. Am I understanding the gist of it?

1430

Mrs Dale: Yes, that's exactly my position. Right now, as I said, when we go in we have a bottom line, a base point to start with, and everybody at the negotiating table understands that. Then we work from there. If, on the other hand, we don't have a starting point, it's almost as if we're going in for a new contract; we've started all over again. This makes everything more complicated and much more lengthy. Now you're going to have people working without a contract while we're trying to negotiate one or you're going to have strikes when the negotiations to get back to work are extended because there are so many items to be taken into consideration. All of this is going to lead, as I said, to less work time in Ontario, less productivity. You can't have productivity if people are negotiating back and forth whether or not they want this — "Do I want that?" "You can't have this." It can be endless.

Mr Duncan: The next time I hear representations in the business community that this doesn't have any effect, that it's just housekeeping, would it be fair for me to suggest to them that unions are putting them on notice now that if the government proceeds with these kinds of changes to the Employment Standards Act, they can expect an even more difficult bargaining climate and a more costly bargaining climate?

Mr Muma: Definitely, yes.

Mr Michael Dale: I think the point of this is that these so-called housekeeping changes could lead to an endless chain of calculations. If you try to formulate some way of trading off all of these and getting these

intricate calculations, by definition they're going to take more time to do. Contracts are going to have to be larger and are going to be shorter in duration.

If there was a general theme to this bill, especially where it talks about flexible standards, for me it's the idea that it's almost creating an anarchy in the labour market. If anyone doubts that anarchy is very difficult to do business in or that business people run away from unstable situations, I suggest you open a curio shop in Sarajevo. You'll find out that business as well as labour wants to have at least a solid framework from which it can work, and it is the duty of government to provide that framework. If government abrogates that duty, then there is no alternative but chaos.

Mr Christopherson: It's turning into quite a fascinating day. I think this is probably the most in-depth look at what the various packages might look like and the implications that could result at the bargaining table from a move like this. You've really gone into a lot of depth and backed it up with some current examples.

What I'd like to ask you, since obviously you've put a great deal of thought into this, is, what do you see as the implications for either a weaker union or an isolated local union in a concessionary round of bargaining where the employer is putting everything on the table as a takeaway and now they've got the right to go beyond the employment standards? What sorts of results do you think we might see in a situation like that if the government went ahead and allowed negotiated agreements that have standards below what are now the floor in the Employment Standards Act?

Mr Muma: I can speak not only as president of our lodge; I also sit on the labour council in Stratford. I know there is a small union that are affiliated with no one and they just came out of Reliance Electric and negotiated a seven-year deal in which they got next to nothing. I think this is what you're going to see. They have no support from anyone and they're on their own. As an international union, we do have the support of our brothers and sisters. One thing we are doing in the machinists is looking an unifying with our brothers and sisters of the Steelworkers and the United Auto Workers. I think you will see eventually more and more of the smaller unions doing the same thing.

If this goes through, I can see confrontation, speaking as a person who sat on a picket line not more than three weeks ago at Crane Canada. It was a strike that did get a little violent even though we tried to be non-violent. This is something we haven't seen in the city of Stratford in years. It's coming because, to me, employers have seen — "Hey, listen, we've got the government on our side now," and they're pulling our rights back. That's what I see forthcoming.

Mr Christopherson: I wouldn't disagree. In fact, I think if you take a look at what we said would happen with Bill 7 — and it is happening — once you reintroduce the legal right to use scabs, you're looking to have violence on the line. It's unavoidable. It's regrettable, but it's unavoidable. Now what you're suggesting to me is that some of the negotiations are going to get so acrimonious because unions will be literally fighting for their very existence because they don't even have em-

ployment standards as a floor. That, added to scabs and the other changes in the laws, is just going to create more and more labour unrest and unfortunately even violence on a picket line.

Mr Muma: I see it coming. In a conservative city like Stratford, if you had told me a couple of years ago that would have happened, I wouldn't have believed it, until I saw it happen on July 25 at Crane Canada.

Mr Christopherson: Maybe if there's a hope, a miracle, for once the government might listen to what the people are having to say about what's going to happen. They didn't with Bill 7, but they should pay attention to the fact that any violence that continues out in the province of Ontario is clearly the government's. They own the responsibility for every person who gets hurt because they've created the environment and allowed the circumstances that have brought it about.

Mr Jerry J. Ouellette (Oshawa): Thank you very much for your presentation. I come from a riding where the local union has been able to negotiate paid personal holidays; paid spa weeks, as they're called; paid birthdays off and that. Don't you think the flexibility in this will allow your union more strength and negotiating ability to focus on the areas that your membership wants to concentrate on?

Mr Dale: The problem with your question is that the current act already allows for employers to negotiate increased benefit. There's no reason to change the act for that. The change in the act is so that you can reduce some of the minimums, supposedly for some greater increase when assessed together. I reject the premise of your question. Certainly, some employers pay for birthdays off, they add more holidays than are demanded by the standards, but I don't see that as an argument for reducing the minimums.

Mr Ouellette: No, what I'm saying is that you now have the ability as a union to focus on areas where you would like to strengthen up and possibly lessen down some if you thought necessary. I see the union as obtaining a great benefit for the local members.

Mr Dale: Certainly unions are a good benefit to workers; I wouldn't disagree with you there. But what we're talking about here is a minimum standard, and if you have a minimum, that implies by definition that there's nothing beneath it, that anything beneath it is subminimum and therefore unacceptable within our society. What you're talking about is that the unions now negotiate greater benefits, but what you're now going to ask them to do is negotiate the very basic things that we as a society should be able to expect, and that is the duty of government; that is not the duty of unions.

Mr Ouellette: Why would they go below the current standards that they're negotiating for, which are extremely higher than what's already out there?

Mr Dale: Why did you suggest that in the bill? Why did you suggest that minimums could be reduced? Because that is what the problem with flexibility on standards is. You are implying that these minimums can be reduced below minimum in exchange for greater benefits in some other area. But a minimum is a minimum is a minimum.

Mr Ouellette: I don't see the local union going below any standards that it currently has.

Mr Dale: I don't see them. What I do see is a business community that may take advantage of that. I'm not saying that all employers are bastards or anything else. The problem is that by definition the statement that every employer is an upright and wonderful citizen is also fallacious. We have to assume that there are some out there that are going to take advantage. If you get into these bizarre formulations of how to trade off minimum standards, what is going to happen is that some will take advantage of it. Honest employers are going to be forced into a position to either become dishonest and cheat their employees or they're going to move to a jurisdiction where they know there's a level playing field, there's a framework set up that means something and a government with teeth in it.

The Chair: Thank you all for coming before us here today and making your presentation. We certainly appreciate it.

Have we a representative from the Halton-Peel Coalition for Social Justice? How about the United Steelworkers of America south central area council? Waterloo Public Interest Research Group? I have an urge to make an editorial comment, but I will refrain.

1440

WATERLOO REGION COMMUNITY LEGAL SERVICES

The Chair: Waterloo Region Community Legal Services?

Ms Sharon Twilley: I'm here.

The Chair: Excellent. Thank you for being more than prompt, well in advance.

Ms Twilley: I thought something like this might happen. No reflection on those presenters, but it's always wise to be prepared.

Interruption.

The Chair: For those making comments from the gallery, every group was asked to report well in advance of their appointed time, at least 30 minutes.

Interruption.

The Chair: Unfortunately other people will be denied the right to speak because they've taken spots up.

Let's proceed with the group that has been gracious enough to join us here today. Welcome.

Ms Twilley: Thank you very much for hearing from me. I have prepared a written brief. I've got two hand-caps today. I've got a throat infection, so I hope my voice hangs out, and I've forgotten my reading glasses. I hope the second problem will be to your advantage. I'm sure I'll manage. If I hold it far enough away, I'll be okay.

I'll quickly go through my paper, just hitting some of the highlights. I don't intend to depart radically from it; I will use its organization. I intend to talk today only on behalf of unorganized workers, not that we don't have concerns for organized workers, but their views are well represented before you.

Our perspective is laid out in the first page of my brief. It tells you who we are and who our clients are. I think that as one of 70 community legal clinics across the province we have a somewhat unique perspective in that

our clients are screened for income and assets and therefore we do see the poorest people with all kinds of legal problems and from all kinds of backgrounds and perspectives. I have described some of the reasons why the people we see have had difficulty maintaining steady employment in the workforce, again on the first page of my brief.

I'd like to start out with the substance of my brief by just telling you a little anecdote, because it really came back to me when I looked at this legislation and I think about what may be happening with the rest of the review, or what I'm guessing may be happening with the rest of the review of this act. When I was a law student I had to look up something concerning employment law. I went to a well-known digest of legal principles that we all learned to use and I couldn't find anything under the heading "Employment Law" until someone helpfully told me that I needed to look under the law of master and servant. There was an act of the Legislature which was on the books for over 100 years and didn't make it into the RSO 1990, was finally repealed, but it was called the Master and Servant Act. I recommend it to you for reading. It's interesting and it was still used somewhat up until 1990.

I'm here to speak on behalf of what I see as the most vulnerable workers, the most marginal workers, because these are the people with whom I'm familiar. First of all, we'd like to endorse the position taken by Professor Judy Fudge, from whom I believe you've already heard. She's a genuine expert in this area of law and there aren't very many of them. We also endorse the two provisions which clarify entitlement to vacation pay and to pregnancy and parental leave.

The first point I'd like to make, though, is that it's our position that it's really premature to move ahead at this time with changes to the procedure and to the enforcement of this act before getting to the substance of it. I find it difficult, without knowing what the proposals are for new legislation, for new standards, to talk about how we enforce them.

To me, the Employment Standards Act has always been the most important to the most vulnerable worker. It doesn't apply to me. In my profession, we're excluded. The well-paid worker in a traditionally middle-class income job has never really needed the Employment Standards Act. By and large they were able to negotiate terms of employment which exceeded the minimum standards and they were by and large adhered to by responsible employers. Vulnerable workers were not in that position. I think the impact of changes to the standards and the impact of changes to these procedures will fall hardest on those people.

I think for the future that those of us who were excluded from the act without much complaint and those of us who didn't need the act are going to be a smaller and smaller portion of the workforce. Is this the future we want for the kids, for our children: lower and lower standards, lower and lower pay?

I refer to Professor Fudge's position with respect to the reference to the global economy as a rationalization for changing things, and I think she makes some very good points there. I've also recently read Professor David Foot's book, as I understand very many other people

have. I have a real concern about the devaluation of work and the treatment of people as commodities and not as fellow human beings in the workplace. This isn't the way to get a good product. This isn't the way to get a quality product. This is not a way to produce a good service.

The results of Bill 49, in our submission, will be both explicitly and implicitly to deregulate the workplace. I explain at page 3 of my brief why I think that's true, why we think that's true.

With respect to why people don't complain, when I first started practising law, people came to me and described what I identified as employment standards breaches. I said: "Go to the Ministry of Labour. You can file a complaint and they'll look after it." They said: "I can't do that. I'm afraid to. I'll lose my job." This was in 1980. I continued to hear that through the 1980s, even the late 1980s, though not as often. I hear that today. I would say, when I was a very junior lawyer: "That's not a problem. The Employment Standards Act protects you from retaliation. It's an offence under the act to retaliate against you for making a complaint." I still say that, because I think people have a right to know that, but I also now say, "But I know it won't make any difference to you."

People are not prosecuted for retaliatory behaviour. The standard of proof is beyond a reasonable doubt. My clients laughed at me when I said that, and they were right. I think they were right; it isn't a useful protection. That's why 90% of people complain after they leave their jobs.

1450

These people have no bargaining power, and their alternatives are few. They now can't receive social assistance for either three or six months if they quit their job or are fired for misconduct. Employment insurance is increasingly difficult to get, with the same sanctions. You're not eligible at all if you're basing a claim on leaving work without cause, which is very narrowly interpreted, or if you are fired for misconduct. It's easy for the employer to say you were fired for misconduct, and they may very well be believed. It's a big risk. That's why people don't complain until they leave their jobs.

I have something a little bit nice to say about workfare on page 4, and I'll leave you to read that.

We also oppose the forced choice between litigation and making a complaint. I've consulted with colleagues in private practice who work both for employers and employees and with members of our board of directors who have input into the policies and procedures that our clinic staff undertake. I sort of facetiously call this a make-work project for lawyers. If you want to read through why I say that, it's in the middle of page 4.

People are going to need to get a legal opinion, and they're going to wait a lot longer for some money. The concurrent complaint and litigation approach worked perfectly well. All it does is protect some employers from potential litigation that might have been successful, because people will need money a little sooner than they might get through the litigation process. Most wrongful dismissal actions are settled, very few of them go to trial, and there is a different test applied by the courts.

We also oppose the minimum and maximum recovery limits, for reasons I set out. I think that employment standards officers probably already exercise some discretion, and they properly should, with respect to complaints that are frivolous or obviously unmeritorious. Why not just explicitly give them the discretion for complaints under some reasonable amount? Merit and pricetag are not always synonymous, for reasons that I describe here. Even the courts never apply the de minimis concept indiscriminately. It's a discretionary power for good reason. Leave it to the employment standards officer.

I give an example of a situation where I think using a \$100 minimum floor results in a real injustice and ties the hands of an employment standards officer in a situation I think we all agree ought to be remedied.

I have a couple of suggestions to make employment standards officers' jobs easier and therefore maybe a little quicker and maybe they can push a few more files through. Reverse the onus of proof. With respect to a lot of complaints, I think an employer who has a valid defence to the complaint can quickly prove it. Send them a notice saying: "We have a complaint. It seems to establish the basis for an order. Tell us what your response is." If there's no response, you make the order. There can still be provision for appeal and so on, but that would save a considerable amount of time. Employers know whether they've breached the act or not probably in most instances.

Increase the upper limit of the penalty element of the order. That may help with cooperating more quickly and help cover the real costs of investigation and enforcement here.

I really advocate some greater focus on prevention. Just one little idea I have, for example, is with respect to education. Get materials out to employers with the Revenue Canada payroll deduction tables. They all get them. They all get them regularly. Isn't there some way you can piggyback on that and share the postage? It's probably impossible, but it's an idea. Let's be imaginative about ways to get information out both to employers and workers so that some of these breaches don't happen.

I'm not convinced that all employers are bad; I'm not convinced that all employers are good. I think there's a spectrum from Dickensian to superb and there are people in the middle who, with better information, could do a better job and cut back on the need for complaints. The ministry knows who the bad employers are. They've got files. Every employment standards officer and every office knows who they are. We all know who they are. They're messing around with everyone. They're not remitting source deductions, they owe EHT premiums, they owe money to the Workers' Compensation Board, they owe money to their suppliers. They're juggling everyone around and they're creating problems for everyone. Focus on them. Deal with them.

Another idea I had is to make employment standards officers' orders, not just review decisions, but actual orders made after investigation, after complaint, and after there's a determination that there is a basis for a complaint, make them a matter of public record. I don't mean publish them in the paper, but make them available to the public, and if the media wish to deal with them let them

do so. That enlists the public in helping to enforce the standards, and it shouldn't be costly at all. Have them in a book on the front counter and anybody who wants to look at them can do so.

I have some suggestions for the improvement of collection and enforcement which I've described at page 6. Again, I don't want to go through those in detail. They're available for you to read. I'm not sure what my timing is here, but I hope I haven't gone too far over.

The Chair: We have about five minutes to go.

Ms Twilley: For me to continue?

The Chair: Yes. Five minutes in total. So depending on how much time you want, if any, for questions.

Ms Twilley: Let me talk about some of the kinds of standards violations I've seen and the difficulty that people have in coping with them. I have to say that in the past our role has been essentially to assist workers who've come to us and sort of organizing the information they have, organizing any evidence they may have, and pulling it together so that it's coherent, maybe asking them some questions about issues they don't realize are important, getting the answers from them, and either putting this together in written form or some kind of brief so that they can take that with them to the ministry. The employment standards officer's job, I hope, is made somewhat easier by that. There is still the formal complaint process. People must still make a complaint before an officer and go through the investigation process.

I have to say that has worked well in the instances where we have actually done that, and we've had a good relationship with the employment standards officers who have at least kept us generally informed of what was going on. But that really is all the role there is for us to play, because it is the mandate of the employment standards officer to investigate, and they have, very properly, very powerful tools to investigate. They can do that job far better than I can.

This comes back to litigation. Litigation isn't really a substitute. I think litigation over an employment standards breach really isn't a substitute for the investigation process. It isn't an adequate substitute. Assuming a \$100 minimum recovery level, if you're told to go to the Small Claims Court for \$100, I would tell anyone who wanted to make a Small Claims Court claim for \$100, in economic terms forget it. It is not worth your while.

If you really believe in the principle and you really want to do it go right ahead, but it's going to cost you money even if you are successful. It costs \$35 to file a claim in Small Claims Court. You have to pay that to the clerk. That is recoverable with the judgement. You used to have to pay \$20 to serve the claim because the bailiffs attached to the court did that. That's no longer available. You have to pay a private process server. In some instances you can probably do it yourself, but then you have to get together an affidavit of service. A lot of people don't know how to do that, so you pay \$30-35 to a process server plus mileage if it's outside the immediate area. You can take a day off work to go to the trial if you're working, if there's a trial, and then if you do get judgement you have to pay for the various enforcement writs to be issued out of the court. You also may have to pay a private bailiff to pick up property or to go and ask for the payment to be made.

All these fees are added into the judgement, granted, but you may very well be throwing good money after bad. This is why I come back to my statement to give the employment standards officers the discretion with respect to claims of a small amount, and I think that is appropriate. Claims for small amounts are sometimes about very important issues and may be about quite a number of workers. Some claims for large amounts are very easy to investigate and very easy to determine. The amount really doesn't correlate completely, and the costs of litigating a \$100 claim or a \$200 claim or a \$300 claim are so high that it isn't worth while.

1500

I don't have a lot to say about whether it makes sense to litigate a \$10,000 claim, but I think some of the issues are the same. In private litigation, in order to get information about what the other party has, you go through a process called discovery. It's very imperfect. There are lots of opportunities to hide information. You can't get copies of shredded records. It's a cat-and-mouse game about trying to get information from somebody who doesn't want to give it to you. You have no opportunity to go in and actually look at the records, which an employment standards officer does. Why deprive people at some notional level of that opportunity, when the claim for more money is not necessarily harder to investigate? It might be and it might not be. There's far from 100% correlation.

Have I used up my five minutes, or is there something else you'd like me to touch on?

The Chair: Actually, we've gone over the 20 minutes. I didn't want to cut you off there, but I want to thank you very much for taking the time to come and make a presentation before us here today.

I'll make one last call for the Halton-Peel Coalition for Social Justice. They have indeed not shown up.

UNITED STEELWORKERS OF AMERICA, SOUTH CENTRAL AREA COUNCIL

The Chair: Next on our list is the United Steelworkers of America, south central area council. Good afternoon. We have 20 minutes for you to divide as you see fit between either presentation or question-and-answer time.

Ms Colette Murphy: My name is Colette Murphy. I work at Walker Exhaust in Cambridge and I'm the president of the Steelworkers' south central area council. I represent approximately 8,000 Steelworkers in the area — the area consists of Kitchener, Waterloo, Cambridge, Guelph, Elmira — and it's on their behalf that I'm speaking with you today.

We believe that Bill 49 will seriously jeopardize the rights of workers to basic employment protection in Ontario. We'd like the government to reconsider its position before depriving workers of the minimum standards which currently provide basic employment protection. These amendments will make it easier for employers to deny their employees the minimum wages and benefits set out in the Employment Standards Act.

Just let me give you an example of an employer in Cambridge that I know of who's already violated the act and got away with it. A friend of mine who works part-

time, approximately 20 hours a week, and is unorganized received her paycheque, which included pay for a statutory holiday. The cheque was for considerably less than she was entitled to, so she spoke to her supervisor about the error. She was told that there was no error, that the employer was now using a different method of calculating moneys owing for statutory holiday pay. It was explained that the employer had gone back three months to find the average daily pay to do the calculation and because she'd had some time off with the flu in that time period, she had received less than her regular day's wage.

I encouraged her to file a complaint with the Ministry of Labour under the Employment Standards Act because the act clearly says that employees who qualify for statutory holiday pay are to receive their regular pay for that day. She spoke with other employees who had also received less pay than they were entitled to under the act, but no one would come forward with her to make a complaint. They were too scared of losing their jobs. The employer had said that if they don't take less pay they were going to get their hours cut and they could possibly have layoffs. She wouldn't file on her own for the same reasons.

If this is already happening in our workplaces, then Bill 49 is a gift to unscrupulous Ontario employers, who will view the amendments as an opportunity to get minimum workplace standards or trade them for increased hours of work.

If the ministry would accept third-party complaints of violations of the Employment Standards Act, I, on their behalf, could make a complaint, therefore taking away the fear of reprisal from the employer in order to protect employees by preserving their anonymity. Third-party complaints which establish a violation by the employer should trigger an audit or an investigation.

Under the current legislation, an employee has up to two years after the facts which give rise to the violation of the act arose in order to lodge a claim. The employee is entitled to recover any moneys owing for up to two years. Very few employees file employee standards complaints while they're still employed. Over 90% of complaints are filed by people who have left their employment. They were fired, laid off or possibly found other employment.

An employment standards claim investigation will not begin until nine months after the claim is filed, so enforcement can take up two or three more years. Despite the lengthy delays in enforcement, this process is quicker than civil proceedings in the General Division court.

Bill 49 reduces the period for which the employee can recover money owed from two years to six months. Employees who are owed more than six months' money will be forced to either drop their claims for money owed in excess of the limitation period or bring a costly and expensive legal action through the civil courts. I guess you've already heard from the speaker prior to me what those costs would be.

For monetary claims beyond the six-month period and in excess of \$6,000, employees will not be able to go to Small Claims Court but will be forced to hire a lawyer and file legal action in the Ontario Court (General Division). Currently the Ontario Court (General Division)

is so backlogged that it takes between three and six years for an action to be resolved.

Another area of the Employment Standards Act that concerns us is the lowering of the Ontario wage protection fund payments from \$5,000 to \$2,000. There have been a number of plants in our area that have either moved south or have declared bankruptcy. Many of these employees would not have received any moneys owing to them if it had not been for this fund. Employees will now have to choose between recovery through the more expeditious and cost-effective path of making a claim through the ministry or filing a lengthy and expensive civil suit with the courts. The injustice of this choice which employees are faced with is made worse because claims through the ministry are capped at \$2,000 and will not include recovery of severance and termination pay.

1510

As the law now stands, it is the employee's choice to forgo his or her remedy under the Employment Standards Act. What Bill 49 will do is eliminate the employee's choice by forcing him or her to go to civil court. After filing a claim, employees will have two weeks to seek legal advice and reconsider their options before their decision not to pursue court action is final. Employees who choose to go to civil court will be forced to wait between three and six years for the wages owing them by their employers.

Many of these unemployed people do not have the money to pursue their claim through the courts and may also lose most of the moneys owing them on legal costs, which they cannot afford.

An emergency alarm sounded.

Ms Murphy: That doesn't mean my time is up, I hope.

The Chair: We'll check and see if there's any validity or whether it's a false alarm.

Ms Murphy: Okay. Employees who are covered by a collective agreement will have to grieve the alleged violation of the Employment Standards Act using procedures outlined in their contract. Arbitrators will have the power to order payment of money owed to employees by their employer. If the employer cannot pay, the order could lead to employees being paid under the employee wage protection fund, which will only pay \$2,000 per employee, excluding termination and severance pay. These changes will force unionized employees to rely on the expensive grievance arbitration procedure. In effect, the Ontario government is proposing to privatize employment standards enforcement for unionized employees.

I would like to say that we do agree with three amendments that have clarified pre-existing jurisprudence of referees. The first one would provide entitlement to vacation pay of two weeks per year, whether or not the employment was active. The second one requires employers to pay termination pay within seven days of an employee's termination. The third is, the calculation of service and length of employment is to include time on parental and pregnancy leave.

We have many objections to Bill 49, but I'm sure that you've heard most of the other ones today. I would like to close by saying that this bill undermines many of the basic principles on which minimum standards legislation

has historically been based. We believe that both organized and unorganized workers will bear the burden of its harsh and unprecedented attack on these basic principles.

I thank you for your time. Colette Murphy, on behalf of the Steelworkers, south central Ontario area council.

The Chair: Thank you very much, Ms Murphy. I'll build this distraction into the time we give the total presentation here. The next up to start questioning this round will be the New Democrats, and we have a generous three minutes per caucus.

Mr Christopherson: Thank you very much, Colette, for that presentation. It's interesting that you raised the issue of the Ontario wage protection fund gutting, because earlier on one of the government members — I don't know if you were present — said in response to another presentation that in terms of the rest of the changes that are yet to come to the Employment Standards Act, the working people in this province should just have faith that the government will take care of their needs. It looks to me like you, including this, agree with us that this government has no intention of protecting or enhancing the rights of the most vulnerable workers. That has got to be one of the best examples there is, particularly when you link the gutting of that desperate last ditch fund for money owed to the fact that one of the first things this government did was give back to employers a \$50-a-year business filing fee that was there to recoup some of the administrative costs of handling those claims.

So it's clear whose side they're on. If the government really wanted to send a message that it cares, it would revisit that decision, reinstate termination and severance and put the fund back up to \$5,000, which really wasn't enough either, but it was certainly better than what we had before, which was absolutely nothing. People should not forget that was part of their anti-worker Bill 7, which of course was the parent of the bad-boss Bill 49.

When you raise the issue of the lowering of standards and the fact that you expect more examples of the kinds of circumstances your friend was in, do you see us having the ability to find out about these cases in any way or do you think it's also going to be difficult to even know what's going on, because people will just throw their arms up in the air and say, "There's nobody out there for me?"

Ms Murphy: A lot of people don't come forward because they're scared. They're scared of losing their jobs. We all know that. We all know people who have been hurt. This is just one example. Yes, they feel as though there's nobody out there. The only alternative they have is people in the unions. They see us as the only alternative. One thing the government is trying to do is to stop organizing. They've made it very hard for people who are stuck in these circumstances to actually reach any kind of settlement. They are turning to unions as the only alternative. Despite Bill 7, we have been able to organize. We've been very successful, especially in this area, in organizing because they do see us as the only alternative.

Mr O'Toole: Thank you for the presentation today. We've heard from the United Steelworkers on a couple of occasions. You've brought a couple of new issues.

I'd like to preface my comments by responding to an earlier comment made that perhaps I was misdirecting.

We refer to this as the kiss-and-make-up tour, because really what the NDP here is trying to do is justify its changes, which were called the social contract deal. I think the responsible member on the other side should keep his comments a little more succinctly to the bill which we're discussing and not —

Interruption.

Mr O'Toole: Well, I'm responding, and that's what I'm doing. So if you want to be involved in this, you get to the table.

I think the key here is, I'd look at the success of the current bill. I'm going to make reference here to the earlier Mrs Dale, who was representing an international association, who opened and closed her presentation with two statements that the changes must be made. I can quote it for you. She's sitting over there. I'm not misrepresenting. She opened and closed saying that the current act does not work.

The information we've received and read over the last two or three days, despite that, would indicate that all the changes, the six-month duration, will bring the claims forward quicker, before there's a huge litigation problem. The issue of the entitlement amounts: Most claims are under \$10,000, 96% of them, yet we spend an inordinate amount of resources today on the 4%, who are people who could perhaps, middle-income earners and up, take care of themselves in the legal system.

Much of the empowerment of the unions today, under their own collective bargaining language, allows them flexibility today and also ensures in the act that they're no less standards. I've heard presenters today say they want more time off work, and I think responsible negotiators will ensure that the people they represent will give no less. It changes by workplace; it changes by season and nature of work.

I want you to tell me you're satisfied that a current bill that rewards 25 cents on the dollar being collected is working, and if it is working, that you aren't prepared to participate in making constructive suggested changes.

Ms Murphy: First of all I'm not privy to any other comments that my predecessors have made. I just arrived because I had to work.

1520

Mr O'Toole: Good for you.

Ms Murphy: I really can't respond to anything they may have said, but I can tell you that the current Employment Standards Act has clearly, in some areas, not worked. The example of my friend I just told you about is one clear example.

Mr O'Toole: I agree.

Ms Murphy: From what I understand, one of the reasons that we only collect 25% of the dollars owed us from our employers is because they refuse to pay. They should pay it in the first place so we wouldn't have to have such good legislation.

Mr O'Toole: Maybe better collection.

Ms Murphy: I don't know if it's better collection, because sometimes they won't pay up no matter what. What we really need is better enforcement of employment standards, because right now they're just thumbing their nose at the government and saying, "Collect it if you can."

Mr O'Toole: We're not disagreeing with you. You make a very good point, and I don't think you'd find anyone here who'd disagree with that. To use scarce resources is what our government is trying to do. We're really going to have to be responsible to the unorganized — very big, large, powerful unions like the Steelworkers aren't without resources, and I respect that — because the unorganized need the limited resources we have left. Those are the people who have the most frequent claims and they're the ones we have to help and focus those resources down. I think you've made some good presentations, some good points, and I'm pleased to listen.

Mr Jean-Marc Lalonde (Prescott and Russell): Thank you for your representation. You seem to be satisfied with the actual employment standards. It's just that they're not being enforced.

Ms Murphy: I can't say that I'm entirely in favour of it. There are a lot of areas where it needs beefing up. I look at this as an opportunity to do that. Like I said, the only three areas where I can honestly say I'm satisfied with your efforts so far are the ones I indicated already.

Mr Lalonde: People have mentioned many times, ever since we started these hearings, that people don't seem to be educated; they don't seem to be aware of the Employment Standards Act. Some people even said employment standards should be posted in the working area. At the present time it doesn't work because probably there was too much political involvement in the past or the employees were not doing their job properly. I don't know what the reason was.

You referred on one of the pages in your brief, "For monetary claims beyond the six-month period and in excess of \$6,000, employees will not be able to go to Small Claims Court." It's a good point, I think, because I believe the government should think of increasing the maximum to \$10,000 for small claims. But one point that should be brought to the attention of the members of the government is that many Small Claims Courts have closed their offices in the last six months. This could have been an avenue, but the avenue doesn't exist because government has decided to close the Small Claims Court.

I fully agree with you that at the present time people are not educated. I know that if people in my riding are not satisfied with the way they were treated at their workplace, they come immediately to my office or they call our office. I believe that the MPPs should all have the Employment Standards Act in place to give to employees who are not too sure. Also, they should give their name — that will be kept confidentially — and if they don't want to call the Ministry of Labour, the MPP should play a role in informing the Ministry of Labour that there was some action that wasn't according to the Employment Standards Act. Would you agree with this?

Ms Murphy: I would certainly agree that employees in the workplace need education on the Employment Standards Act. Yes, it's a very good idea to have it prominent in the workplace so that each and every employee has access to that. It's clear from the call I got from a friend, and I've had many others, that people really don't understand what their rights are. Because

they're not phoning the ministry to ask their advice on what their rights are, that tells me there's also a problem there. They either don't trust government or they just feel they're not going to get any help. It's a real problem. When people know what their rights are, it goes a long way in stopping the injustices.

The Chair: We're two minutes over. Thank you very much for taking the time to come before us here today. We appreciate it.

Interruption.

The Chair: I'm afraid not. The next group is already here.

Mr Christopherson: On a point of order, Mr Chair: I've been advised that the local number that was referred to earlier, if you didn't have it already and if you're looking for it, to the parliamentary assistant, is 885-3378.

Mr Baird: Is that the one that's advertised in the local phone book, or where is that advertised for people to call?

Mr Christopherson: One of the union reps who was here earlier just handed me this and said, "This is the number that's been referred to."

Mr Baird: I'll certainly take that back; I appreciate it. But if that's the one that's advertised, that will be also helpful. Thank you.

WATERLOO PUBLIC INTEREST RESEARCH GROUP

The Chair: We have the next group here to make a presentation, the Waterloo Public Interest Research Group. Good afternoon, Mr Novak. We have 20 minutes for you to divide as you see fit between presentation time and questions and answers.

Mr Daryl Novak: I'd like to begin by thanking the committee for giving us the opportunity to speak to Bill 49. WPIRG is a non-profit organization funded by students at the University of Waterloo, and we have a membership of over 12,000 individuals. Our mandate is to promote research, education and action on issues affecting the public good in our community. We're part of an international network of public interest research groups, including 10 others based here in Ontario.

The constituency we serve is primarily students. However, the framework for WPIRG's work can be defined as working to protect the public interest. This is a bad time for us to be doing a presentation. We are a primarily volunteer-run organization, and this being the summer term for students, there aren't very many students around. We believe that changes to the Employment Standards Act will have a profound impact on our constituency, being students and youth. We think it's very important that there is extensive consultation, and unfortunately we are not able to prepare a brief that is very representative of our constituency because school is not in session right now.

We are very interested in the phase 2 process of the amendment to the Employment Standards Act that will be happening presumably in the next sitting of the Legislature. As a preliminary comment, we believe that employers will always have the advantage of superior economic power. In practice they will always retain the ability to provide work and to take it away in an econ-

omic system based on competition. As a society our collective responsibility expressed through our governments is to prevent exploitation, and in the case of the Employment Standards Act to stop the worst form of employment abuses by providing minimum standards. Thus, with respect to Bill 49 and the fall review of the Employment Standards Act, WPIRG's focus will be to advocate for the protection of the rights of the average unorganized worker.

1530

You know of course that over half the employees in Ontario are not represented by a union. These workers rely on the Employment Standards Act to provide them with basic terms and conditions for work and the enforcement mechanisms provided therein. Any changes that threaten the basic floor of rights of workers are and will be categorically rejected by WPIRG. The reason we take that position is because we believe that students and youth are among the most vulnerable in the labour force. They tend to work in service sector jobs that can be categorized as casual, temporary, part-time, poorly paid, low-skilled and insecure. The Employment Standards Act is the only type of protection they really have.

Some of the recommendations that we have: Again, we do not want to see any type of erosion in minimum standards. I learned this morning that provision to negotiate between an employer and a union around employment standards was removed from Bill 49. This is something we're relieved about. We know that will have an impact on students and youth.

We believe that there needs to be a standardizing of the legislation, that there should be few exceptions. Typically, students and youth are busy surviving in meeting their rent during school and they really are not provided with an opportunity to know what their rights are around employment and housing and other such things. We believe that there needs to be more education of what people's rights are, what students' rights are. Because they're unorganized, when students have a problem or youth have a problem, they'll often live with the conditions that they're working under, because all of you know that there is a high unemployment rate among youth. Often they will suffer through whatever conditions they have, and when they leave, because they are young, possibly, and also because they don't know what their rights are, they don't typically complain.

We believe that there need to be more employment standards officers and that there needs to be a more vigorous enforcement of the act. There needs to be an immediate response to claims. Again, students and youth really have nowhere to turn, so if they are going to turn to the employment standards office, they need to have an immediate response.

We believe that there should be routine investigations. When employers are demonstrated to have violated the act there should be an automatic audit of their other employees. Often in a workplace where it's predominantly youth, if one individual is wronged there's a strong possibility that other individuals have been wronged as well.

Looking at the limitation periods, reducing from two years to six months seems reasonable when you consider

that over 90% of claims are made by people after they have left that employment. However, with other Employment Standards Act violations, six months does not seem reasonable because of fear of reprisal from an employer. I think that is something that needs to be stiffened in the act, that employees are not subject to arbitrary reprisals from their employer.

Debt collection, we haven't had an opportunity to analyse what kind of effect privatizing this function of the employment standards office will have. Our concern centres around what will happen, if there will be a levy on people for the money that's collected on their behalf and also the pressure that will be brought to bear with them coming to an early settlement. Youth and students will suffer most in that case because they will be more easily coerced. Although the bill provides for that not to happen, it doesn't really spell out how that will be prevented.

We really didn't have an opportunity to do an extensive review of the act, but we're anticipating the changes to the act with trepidation. When the changes are announced we will do a full review.

This is the extent of our comments to this point.

The Chair: Thank you very much for your presentation. That leaves us two and a half minutes per caucus, and the questioning this time will commence with the government.

Mr John Hastings (Etobicoke-Rexdale): Mr Novak, I'd like to ask you what the role the Ontario Public Interest Research Group plays in terms of advancing knowledge and understanding of the workplace for young people and students if that isn't one of your roles. You have expressed certain opinions.

Second I'd like to ask you, what does it say about our education system, in the secondary sector particularly, since the law in society course explicitly has a section dealing with employment law and employment rights? Are young people and students today not hearing what goes on? What role do you think unions must play in the broad-based educational effort? That point has come up with several presenters today, and it seems to me that the union movement has always done very well in terms of seminars and getting out the message. What's missing if they're not doing that any more? I've heard that from two different presenters today and from other people on the other two days. I wasn't at those sessions, but that theme came up.

Mr Novak: As far as what our role is in advancing education, we have a very limited budget. The types of activities we're able to conduct, you can guess that among a membership of over 12,000, to try to effectively reach all of them is very difficult for us. We have a budget of under \$100,000. So even with a couple of employees, paying rent, the actions we take are very minimal.

With the advent of the World Wide Web we're looking at doing some work to further educate students. We're looking at new avenues to be able to reach out to students and do an education, but we're really just there to try to fill in the gaps. With the Employment Standards Act, because it is an integral part of what the government provides, it seems the onus should be on the government

to devise an effective manner in which to educate the public, including youth. However, we are always ready and available. Given the proper tools, we will use them as effectively as possible in order to reach our constituency.

As far as the educational system, perhaps what we need is a course in citizenship and courses on your basic rights as a citizen. I think that framed in a proper way, you can build that type of sense of citizenship in students. Of course, the context for that is very important as well. People feel like citizens when they feel they have a place and a role in their community. Of course the feeling that's created in someone is delivered in many different ways and spheres.

1540

Mr Lalonde: I tend to agree with my colleague Mr Hastings about some comments that you made. Are you aware of the content of the Employment Standards Act, and if so, what impact do you think this is going to have on your group?

Mr Novak: As they relate to the changes brought about under Bill 49?

Mr Lalonde: Yes. I don't think you have gone through the whole amendment.

Mr Novak: I've got it right here. I got it off the Internet, as a matter of fact. Our concern is really based on the minimum standards, the floor of standards that may be jeopardized, not necessarily through Bill 49. Right now this has been completely pulled, so it won't have an impact, but we strongly believe that there need to be minimum standards that people know about and that are enforced.

Mr Lalonde: You mention that the privatization of collection will have an effect on students and youth. I believe that up to \$10,000, up to six months are to the benefit of youth and students.

Mr Novak: We have been unable to do any empirical research looking at the claim average as it relates to youth. All we have to look at right now has been out of the annual report, the aggregate as reported by the Ministry of Labour.

Mr Lalonde: I have no more comments.

Mr Christopherson: Thank you for your presentation. Early in your comments you noted that superior economic power will always lie with the employer as a natural order of things and only the laws of society will help to offset that natural advantage. The government's claim all along, in terms of not only this agenda but their entire agenda, and they continue through with Bill 49, is that they are going to make the economy work for everyone, it's going to create jobs and that's going to take us back to the Garden of Eden. Yet we know from your comments that there are a lot of young people who are fearful of the future, and I hear you suggesting that Bill 49 is not helping to alleviate the concern that young people have. Can you look into your own crystal ball and give me a sense of where you think the province of Ontario will be with labour law changes like Bill 7, changes to WCB, Bill 49, loss of pay equity, all those kinds of things, and what that means for young people over the next half-decade or so?

Mr Novak: The cornerstone to a growing economy is people's sense of stability and the belief they have that

there is a future for them. When I'm walking through the halls of our school or when we have students coming in to use our resource centre, there is a great deal of apprehension and fear about the future. We have a lot of graduates who come back saying that they are unable to work in their field of study; many of them have ended up in places that are far from where they originally wanted to be.

I think students' sense of what is happening is that we're moving from a sense of collective responsibility in our communities to a dog-eat-dog, individualistic social structure. I can't see how that feeling, that sense of the future can help to give people a sense of a stable future. Unless we see demonstrated actions by the government to empower communities and to have a finely wound social fabric that supports people when they're down, provide basic education and excellent education for everyone, I think the immediate future looks glum, and that's certainly something that we hear a lot about.

The Chair: Thank you very much for taking the time to make your presentation here.

I don't believe our next presenter, Canadian Auto Workers, Local 1986, is here yet. In their absence, and we've got a couple of minutes before then, I wonder if we could have a five-minute recess; and subcommittee members, there's an issue to be discussed for next week's hearings, if I could ask the subcommittee members to meet me here for just one second.

Actually, there are 10 minutes before their appointed time. We'll take a 10-minute recess.

The committee recessed from 1547 to 1601.

GUELPH-WELLINGTON COALITION FOR SOCIAL JUSTICE

The Chair: I call the meeting back to order. We're grateful that our 4:20 group, the Guelph-Wellington Coalition for Social Justice, arrived well in advance. Good afternoon to you both. We have 20 minutes for you to divide as you see fit between presentation time or question-and-answer period. Please introduce yourselves for the Hansard reporter.

Ms Tracy Rockett: Before we start, are all the MPPs here?

Mr Christopherson: All the ones who matter.

The Chair: There are representatives from all three parties here, yes.

Mr Baird: All the government members are here.

Ms Rockett: Okay. My name is Tracy Rockett and my colleague is Chris Margetson. We represent the Guelph-Wellington Coalition for Social Justice, located in Guelph, whose members comprise 30 different organizations representing over 2,000 members.

Ms Chris Margetson: When Labour Minister Elizabeth Witmer introduced the Bill 49 amendments to the Employment Standards Act, she claimed to be making housekeeping amendments only. Bill 49 would be facilitating administration and enforcement by clarifying and simplifying definitions and procedures. Ms Witmer presented the changes as minor technical amendments. These changes hand employers a huge strategic advantage and are clearly substantive. They diminish and eliminate rights and options for all workers, but most particularly

the vulnerable in our workforce: non-unionized and part-time or low-paid workers. These changes will make it more acceptable and simpler for employers to mistreat or cheat employees and much more difficult for all workers to enforce their rights.

A fundamental feature of the Ontario law has always been that no one can contract out of employment standards. The legislation has set a floor below which negotiated agreements or contracts could not fall. Bill 49 removes this floor. This floor of rights has been enshrined in Ontario law for decades. Housekeeping? Hardly.

Ms Rockett: Flexible standards, for employers only. Bill 49 contains a fundamental change to Ontario labour law by permitting workplace parties to contract out important minimum standards. Prior to these amendments it was illegal for an agreement to have any provisions below the minimum standards set out in the ESA. Bill 49 allows a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay if the contract "confers greater rights...when those matters are assessed together."

Employers now have the opportunity to attempt to trade off minimum standards in exchange for increased hours of work. When standards change for unionized workers, they will change for non-unionized workers as well. Market forces will pull all of us down to the lowest level. Employees are human beings, not bargaining chips.

The potential of this amendment to erode people's standard of living should be enough to make the drafters of these amendments rethink, if not radically alter, Bill 49. It is certainly enough to make the Guelph-Wellington Coalition for Social Justice stand in opposition to the bill as a whole.

What kind of housekeeping takes legislated rights that were the floor and rips them up to be put on the table? This is a demolition.

The shortsighted may see this rush to the bottom as helping employers become competitive, but the more sane will question whether this makes for higher productivity, better workplace relations, increased consumer purchases or an improved quality of life.

Ms Margetson: Ms Witmer's amendments propose to end the Ministry of Labour's enforcement responsibilities whenever they consider violations could be resolved by the courts. Consider: A 20-year maintenance worker is terminated without cause. His legal right is to receive notice of termination or pay in lieu of notice under both employment standards and common law. Generally the entitled notice under common law is greater than the employment standards minimum.

Presently the worker could file an employment standards claim and instigate a lawsuit under the common law notice entitlement. As a general rule the employer is willing to pay the employment standards minimum quickly to avoid the simple and sure enforcement through the Ministry of Labour. This would allow the worker to pay the rent and feed his family or use the money to retain a lawyer to pursue the wrongful dismissal suit in the courts, as legal aid is not available. The minimal employment standards payment is then deducted from any court-ordered payment.

Bill 49 will take this strategy away from the worker. He will either be forced to accept the initial minimal claim, regardless of his legal or moral rights, or risk eviction and food banks in order to sue his former employer for what is rightfully his. He will never again be allowed to do both. Litigation may take years. Employers declare bankruptcy or move. There are no guarantees he will ever see one dollar.

Especially low-income workers will feel pressure to settle for less money than they are really owed. Sudden loss of employment can throw a vulnerable family into stressful chaos. They will be expected to make this very important decision during the first two weeks of this most trying time of their life. Many vulnerable workers are not aware of their legal rights and could be excluded from commencing a civil action unless they obtain legal advice within this short, yet chaotic and stressful two-week period.

Even worse, a worker who quickly starts a civil action without realizing the ramifications of this decision does not appear to have even the short two weeks to change her mind. She appears to have no right to do so and then institute a complaint under the act. This is an unjust and seemingly blatant attack on some of the most abused workers in Ontario: those phased out, squeezed out and let go, many of whom have dedicated years of their life to profit-hungry employers. At a time in their lives when they are feeling battered and bruised, hopeless and depressed you are adding yet another difficult and needless burden.

Ms Rockett: Maximum/minimum claims: The amendments introduce a new statutory maximum amount that an employee may recover by filing a complaint under the act. This maximum of \$10,000 appears to apply to amounts owing of back wages and other moneys such as vacation, severance and termination pay. There are only a few exceptions, such as for orders awarding wages in respect of violations of the pregnancy and parental leave provisions, and unlawful reprisals under the act.

Any cap will penalize those workers who are owed more than the maximum. A worker who has been deprived of wages for a lengthy period will have the least amount of means to hire a lawyer and wait for the case to be settled. This cap will encourage the worst employers to violate the basic standards.

Bill 49 also gives the minister the right to set out a minimum amount for a claim. Workers who make a claim below the minimum will be denied the right to file a complaint or have an investigation. This allows any employers to abuse their workers under the minimum in any six-month period and avoid legal penalty.

The question for you, the people entrusted to protect the public, is this: Why have any legislated rights if you're not going to enforce them?

The *raison d'être* for government is to ensure fair play, to allow all citizens to operate and compete with the same rules applying for everyone. By instituting a minimum and a maximum claim you will tilt the table in favour of one group, the employer. If employers must steal from their employees, and to be sure, not paying what is legally owed is theft, then (1) they should not be in business; and (2) who would want to do business with

them anyway? That kind of employer would not make a trustworthy partner in any enterprise.

1610

Real life: The general direction of these amendments is towards allowing business to be self-regulating, the assumption being that companies will just sort things out among themselves. Of course they will. The drive to make the maximum amount of profit is the only standard by which any decision will be judged. This allows no room for the individual or for society.

A case in point: Little Tikes of Guelph, a premier plastics manufacturer with a well-regarded line of children's toys, a profitable, community-minded company that established a manufacturing and warehouse centre in 1995, grew to employ 120 workers. Although non-unionized, the company treated employees well and rewarded them with profit-sharing. As well, employees could work overtime whenever they desired to do so. Little Tikes also contributed to the community by donating toys to local groups time and again.

In late 1995 the company announced it would be purchasing an empty factory and expanding operations; 65 new jobs were forecast. Three months later the company announced that it would closing down the manufacturing and not expanding. Why, you ask? Because they could make even more profit by relocating to another existing site in the US. They were making a profit in Guelph, they were a good provider for the community, but money talks. Profit is the only thing that matters. There is no loyalty to anyone or any place.

How about some examples of how companies conduct business with their employees? First there's the electrician working for a small technology company that has orders for over \$1 million on the table. Their commercial production facility needs to get on line in a hurry, so in the first week the electrician works over 80 hours; second week, over 80 hours again; third week, by Wednesday, he gets paid for week one. The paycheck is for 40 hours of work. One of the owners tells him that the company only pays for 40 hours of work and any work beyond that is voluntary. Needless to say, the company shut down by the end of the third week. The electrician is still owed more than 80 hours of overtime and has yet to decide on how to proceed.

Then there's a waitress. She was employed, along with 19 other people. One Monday she showed up for work and there was a note on the door saying that the place was closed. All the workers pursued the matter with the Ministry of Labour. Generally they were owed two weeks' wages, vacation and severance. Less than a year later the employees were reimbursed by the ministry.

While the previous examples are not earth-shattering, they do speak to some of the limitations of Bill 49. What will be the minimum standard? Whatever the limit, it will force a number of workers to go to Small Claims Court to get what belongs to them. How many people would actually do this? What about having only two weeks to make a decision on how to proceed with your claim? How will workers even know what their rights are?

If we cannot trust companies to reinvest their profits in our community, why give any company more loopholes to shirk their responsibility to their employees and to our

society? The bottom line is this: Profits will always preempt fairness, equity and human beings.

Private collectors: The proposed amendments would privatize the collection function of the Ministry of Labour's employment practices branch. This provides a look at a task which has traditionally been public. An ongoing difficulty has been the ministry's ability to collect wages assessed against employers because of the employers' refusal to pay. Your solution is to absolve the government of the responsibility to enforce the act by farming out the problem to a collection agency. Why create a market for vultures to come in and pick off hard-earned wages from anyone who was abused by their employer?

In addition, the employment standards director can authorize a private collector to charge a fee to persons who owe money. This is intolerable. The ideology behind the amendment shows a complete lack of understanding of the history of government and its role in society. Laws exist to protect all of us. Our society needs independent, impartial people whose only interest is in enforcing and upholding the law, not turning a profit. Will the police be next on your list of government employees who must justify their existence by being able to raise enough revenue to cover their costs?

Ms Margetson: The amendments in Bill 49 seriously tamper with the period of time that employees are entitled to back pay. Presently, employees are entitled to back pay for a two-year period. Bill 49 reduces this period significantly to six months from the filing of a complaint. Again, low-paid, vulnerable workers will suffer. They often cannot afford to finance a lawsuit and live in fear of their employer. They would not be able to file a complaint until they are terminated and/or change employers. They can work on promises for weeks or months, until they realize that they will not be granted their statutory rights by their employer and finally file the claim. As mentioned earlier, these workers will not be eligible for legal aid in order to institute a lawsuit.

Ms Witmer's statements regarding housekeeping, simplifying etc seem ludicrous in light of the heavy burden this places on vulnerable workers. Even more incomprehensible on this same issue of time periods is the continuation of the two-year period granted the Ministry of Labour to investigate and yet another two years to ensure the employer pays moneys owing to its workers. The serious impact on families waiting four years for money owed to them does not seem to be taken into consideration by Ms Witmer. How can she call this "facilitating," "housekeeping" or "streamlining"? It's beyond us. We're sure the buzzwords will fall on deaf ears in the families and communities of the most vulnerable non-organized workers of Ontario. The coalition's buzzwords for these amendments would sound more like "abusing," "cheating" and "selling out."

Ms Rockett: Alternative suggestions: proposed changes to make the Employment Standards Act more efficient and effective.

Under administration:

Allow anonymous complaints and third-party complaints.

Full investigation of employers' practices initiated by anonymous complaints and third-party complaints.

Proactive education and investigation procedures in industries competing on low wages and known to have more employers who violate the act, ie, hotels and restaurants, garments and cleaning, as well as education for new corporations.

Heavy penalties for employers who do not pay out orders within short, fixed periods of time and active prosecution of repeat offenders.

Mandatory posting of the act in all workplaces.

Severe penalties for firing a worker for attempting to enforce the act.

With content:

Have all parts of the Employment Standards Act apply to all workers in the provincial jurisdiction. The act now has long lists of people excluded from minimum wage, another list for public holidays, another for hours of work etc. If the law applied to everyone and everyone knew it, there would be a lot fewer violations of the act.

Include a prohibition against unjust dismissal. That way employees couldn't be as easily fired for just trying to stand up for their rights under the law.

Strengthen the act so that employers can't hide from a responsibility in the shell game of contractors and subcontractors.

As the changes mentioned above seem reasonable, and many are inexpensive, why are you not interested in implementing them under these circumstances of reduced spending? The Guelph-Wellington Coalition for Social Justice wonders why this government which abhors any special-interest group now seems to be blinded to the fact that these amendments are clearly a blatant example of pandering to special interests, namely, business.

Ms Margetson: We feel that Bill 49's proposed changes are part of a vicious attack on the most vulnerable workers in Ontario. Given the government's record over the past year of battering the poor, the elderly, the sick and the marginalized, we don't have any confidence in Ms Witmer's desire or ability to amend the act to protect workers in any way.

In the early 1980s the Ministry of Labour did 1,600 inspections per year of employers to ensure that there was compliance under the act. Over the last year there were 20. Clearly, the Minister of Labour and this government cannot be trusted to protect workers' rights.

It was reported that Michael Harris said in May that we must make the system more effective so that we can better use our resources to help workers. The Guelph-Wellington Coalition for Social Justice has serious doubts about that statement and about his knowledge of the proposed amendments in Bill 49. Mr Harris could not possibly have familiarized himself with this bill and still make this statement.

1620

The real objective of these proposed changes is to save money and to finance the \$8-billion tax cut. Employers are the winners in this game of cheat. The only improvements we see are the improved chances for employers to avoid minimum standards in Ontario workplaces. We want real improvements, not these improvements for employers in the games of chance and cheat.

In conclusion, we strongly recommend that standards must not be eroded or negotiated. Rights must be easily

obtained, and enforcement of these is of paramount public interest and must never be privatized.

The Chair: Thank you both. We've got two minutes remaining, but I'll grant a minute or so to each caucus. This time the questioning will commence with the official opposition.

Mr Lalonde: Thank you very much for your presentation. I think you have put in an awful lot of time to prepare this brief. I'd just like to know what effect you think this new employment standard will have on family quality of life, the fact that employers will be able to extend your working hours and having to work during the evening instead of during the day, on Sunday and everything?

Ms Margetson: I think it will be very difficult for families and in particular families that are already under a lot of stress. I work in a low-income neighbourhood in Guelph, the Willow Road neighbourhood. In that neighbourhood, there is 35% unemployment and those people who are working are often working at low-paid or part-time jobs. The families are under stress. Family violence has increased this past summer by at least 25%. If anything, they need support and understanding from employers around family circumstances, and this will just take any hope of that ever happening away from these families.

Mr Lalonde: Were you satisfied with the actual employment standards that existed?

Ms Margetson: I think the employment standards were reasonable. There was room for improvement, certainly. I think Tracy very nicely read to you some of the ideas that we had around what some of these improvements could mean, but the proposed Bill 49 takes away many of the advantages that were in the Employment Standards Act and will weigh heavily upon the shoulders of vulnerable families and rightly all workers in Ontario, I believe.

Mr Lalonde: So really with the reduction of 45 enforcement officers, I don't think we're going to get any better. Even though we have a new employment standard in front of us, I don't think it will improve the situation at the present time.

Mr Christophererson: Thank you both for your presentation. As you know, my colleagues and I in the NDP agree that the "bad boss" Bill 49 is a real gift for the most unscrupulous employers in our province. I'd like to focus on the issue of people who feel themselves to be very vulnerable to standing up for their rights and having to make a choice between their rights and their job. I don't know if you were present earlier or not, but the minister herself was here and said that if people only knew they have protection under the law, if there were any retaliation they would feel far more comfortable. In fact, one of the representatives from the chamber of commerce here said that in terms of the six months moving to two years, that was to stop employees from, as he said, "sitting on the can and mulling it over," and that's why it's okay to go from two years to claim to six months. Knowing that 90% of all the claims filed with the ministry are made after people leave that employment, why do you think the change from two years to six months is so devastating for this vulnerable population?

Ms Rockett: Well, it's obvious —

Mr Christopherson: Well, I just want to say it's not that obvious to them, so please say it clearly.

Ms Rockett: You've been abused by your employer: They didn't pay you your vacation pay, they're not paying you overtime, whatever, you were forced to work on a holiday. Then trust is gone. You know that you don't have the power to go back.

Actually, I was in a similar circumstance, in that an employer I worked for, I'd given my notice because I was going to go to university, and the president of the firm told me of my outstanding vacation days, that they were going to deduct the days that the entire company had shut down over Christmas, because those were then actually voluntary holidays. So I had four days of pay taken away from me. At the time it was, like, what are my rights, or who do I go to, and why even bother? It's not worth it.

When you look at the couple of examples that we had, some employers, when they recognize an opportunity to take advantage of their worker, then they will. If you've been taken advantage of, you're not going to work there any longer; what's the point? Because it's just going to happen again. If you do go and complain, the employer finds out and you can be fired and then there's really no — fine, you get your termination pay. Thanks, that's great. How do I feed my family? How do I keep a roof over my head? So it puts pressure on employees to decide very quickly, am I going to put up with this? Am I going to put up with being abused?

Especially in the job market now. For people who say unemployment is only 9.7%, whatever, that's a joke. Look at the number of people still on welfare. It's at least double that, if not more. So there are not jobs out there for people to go to, and the jobs that are there do not pay that much. So you have people just scrambling to get by. They're forced to choose between just surviving or going over the brink.

That six-month period just allows employers to keep just taking away, especially if you introduce the minimum standard. Then the employer can say: "Okay, I'll just keep my little tally. Maybe it's \$500, maybe it's \$1,000. I'm up to \$750 on this employee. It's been six months. I can nail him again for another couple hundred." It's totally to the benefit of the employer to abuse his or her worker, and that's disgusting.

The Chair: Excuse me, that's been seven minutes on Mr Christopherson's one minute, so I'll have to give the last question to the government.

Mr Derwyn Shea (High Park-Swansea): Thank you very much for your presentation. I'm not insensitive to some of the points that you've raised, but perhaps I could just pick up on a couple and ask for clarification. You expressed some concern about the reduction from two years to six months. I wonder if you can respond to a question that I have. Since about 90% of all claims are currently now put into effect within the six-month period, would that lead you to think that perhaps there's some merit in at least looking at a reduction of the level if there is some tradeoff in efficiencies?

Ms Margetson: I'm uncertain about what the reasons behind that are. If 90% of the claims are already going in within the six-month period, what that tells me is that

90% of workers in Ontario are able to get the supports that are necessary to act within that six months. But I also tells me that the 10% who aren't are likely the most vulnerable workers in Ontario. Maybe their English isn't particularly good. Maybe they don't have much formal education etc, or maybe they have five or six children that they need quickly — I'm not sure if any of you have actually ever been in a home of someone who just found out he was unemployed and had six children and he's been working in a minimum-wage job in a factory. I have been in that situation myself, and the chaos and the stress and the unbelievable fear that's in that family, it takes time for them to work that out. I've seen people who've been hospitalized in a psychiatric facility when that happens. It's a very difficult situation, especially if someone has other issues that they're dealing with, perhaps a mentally ill wife or two or three children who are learning-disabled. It's just like adding on top and on top. So why not give those 10% of people who need that additional time, the time? Find a way to give it to them.

Mr Shea: In terms of your presentation, you talked about the application of the act. You were very precise to say in your submissions that there should be no exclusions. Can I ask for clarification on that?

Ms Rockett: Sorry, which point?

Mr Shea: You want no excluded groups, no excluded occupations; you want everyone subject to the Employment Standards Act. Do I understand that clearly?

Ms Rockett: Yes, with the rider that obviously there are some groups, especially those that are — what's the terminology? — the emergency-type workers —

Interjection: Essential services.

Ms Rockett: — essential services that have to, obviously, work unusual hours.

Mr Shea: We had a presentation made — I guess it was back in Toronto; frankly, I'll have to check my notes — that particularly has impressed me, the information technology sector, and there are other sectors like it that are growing, which I'm sure you're familiar with, distance work, all that. In fact, today it was interesting to hear the city of Toronto indicate that one in five workers are now employed out of the home and the difficulties they've got in terms of planning and zoning and a whole range of things involved with that. I wonder, are you suggesting as well that all those involved in that sector should equally be made applicable to the ESA?

Ms Rockett: I guess it depends on whether they're self-employed or not. If you're self-employed, you have to manage your own time. If you're based on commission sales, again, you have to manage your own time, and that's part of being a successful worker.

Mr Shea: I see. Then maybe just a final question where I can touch on another part of your submission that I found interesting. You gave that interesting case of the toy company, and I forgot the name of it.

Ms Margetson: Little Tikes.

Mr Shea: Little Tikes. It certainly impressed me, that illustration. What would you have done in response to that, for example?

Ms Margetson: I don't think we were trying to make the point that we should have done something. I don't think anybody was trying to make that point. I think the point that we were trying to make is that it's an example

of a situation where even an employer who is extremely well respected in the community, had a wonderful reputation, donated toys to day care centres, was community-minded, was well thought of, was involved in promoting voluntary activities, the run for MS, the big Ivan, the whole thing, a very community-minded company, and yet with no hesitation shut the doors. The loyalty is not to the employee. That is the point we were trying to make.

The Chair: Sorry, Mr Shea, we've gone well over. I've been almost as generous with you as I was with Mr Christopherson.

Mr Shea: I appreciate that, Chairman. I would have liked to pursue that one in great depth, like Mr Christopherson. It was an interesting path to pursue.

The Chair: Thank you both for taking the time to come and make your presentation before us here today. We certainly appreciate it.

Ms Margetson: You're welcome. Thank you for the opportunity.

The Chair: With that, that concludes our hearings here in Kitchener. This committee stands recessed until tomorrow morning at 9 o'clock in London.

The committee adjourned at 1633.

CONTENTS

Wednesday 21 August 1996

Employment Standards Improvement Act, 1996, Bill 49, Mrs Witmer / Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, M^{me} Witmer	R-971
Brant County Community Legal Clinic	R-971
United Steelworkers of America, Local 2859	R-973
Chamber of Commerce of Kitchener-Waterloo	R-976
Stratford and District Labour Council	R-979
Workers Repetitive Injury Support Team	R-983
Waterloo Regional Labour Council	R-986
United Steelworkers of America, Local 677	R-989
Canadian Auto Workers, Local 4304	R-993
Guelph and District Labour Council	R-995
International Association of Machinists and Aerospace Workers, Festival City Lodge 1927	R-998
Waterloo Region Community Legal Services	R-1001
United Steelworkers of America, south central area council	R-1003
Waterloo Public Interest Research Group	R-1006
Guelph-Wellington Coalition for Social Justice	R-1008

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Mr John	Hastings (Etobicoke-Rexdale PC) for Mr Murdoch
Mr John R.	O'Toole (Durham East / -Est PC) for Mr Carroll
Mr Derwyn	Shea (High Park-Swansea PC) for Mr Maves

Also taking part / Autres participants et participantes:

Hon Elizabeth Witmer, Minister of Labour

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Ray McLellan, research officer, Legislative Research Service



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R-23

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**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Thursday 22 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Jeudi 22 août 1996

The committee met at 0904 in the Radisson Hotel, London.

EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): Good morning. I call the meeting to order and on behalf of the committee members say how pleased we are to be in London today for our fourth day of hearings on Bill 49.

LONDON AND DISTRICT LABOUR COUNCIL

The Chair: We have our first group ready to present, the London and District Labour Council. Come forward to the table, please. Good morning. Just as a reminder, we have 20 minutes for you to divide as you see fit between presentation time or question-and-answer period, and I wonder if you might be kind enough to introduce yourselves for the benefit of the Hansard reporter.

Ms Edna Anderson: My name is Edna Anderson. I'm vice-president of the London and District Labour Council.

Ms Carrol Anne Sceviour: Carrol Anne Sceviour, representative of the labour council.

Ms Sandi Ellis: I'm Sandi Ellis, representative of the labour council as well.

Ms Anderson: The London and District Labour Council welcomes the opportunity to present this submission on behalf of the over 2,400 affiliated members of our organization. In addition, we speak on behalf of many unorganized workers in our area who call our office for advice when employers do not follow the law set out in the Employment Standards Act.

We were not surprised when Bill 49, which allegedly made administrative changes, turned out to be another attack on workers, both organized and unorganized.

In addition, we feel that the flexibility it offers simply gives employers more ways to evade compliance with the act, which already has a shameful record of violations and failure to pay assessments owed to workers.

The real statistics from the employment standards working group are as follows:

(1) The time for a claim to be considered by an employment standards officer is nine months.

(2) The percentage of investigated Toronto employers found violating the Employment Standards Act was 94%, based on routine inspections by the ministry, and 71%, based on claims by workers.

(3) Routine inspections and audits in Ontario: The number of companies that had full audits was 21. The percentage of inspected/audited employers found violating the ESA was 81%.

(4) In 1994-95, assessments versus collections in Toronto: The total number of employees in the Ministry of Labour found to be owed money by their employers was 8,298 and the total claims collected was 3,552. The percentage of employees who did not receive money from their employers was 56%. We think that's disgraceful.

Enforcement under a collective agreement: Currently under the ESA, unionized employees have access to the considerable investigative and enforcement powers of the Ministry of Labour. This inexpensive and relatively expeditious method of proceedings has proved useful, particularly in situations of workplace closures and with issues such as severance pay and termination pay.

The Bill 49 changes eliminate recourse by unionized employees to this avenue and instead require that all unionized employees use the grievance procedure under the collective agreement to enforce their legal rights. The union will bear the burden of investigation, enforcement and the accompanying costs. The director can make an exception and allow a complaint under the act where he thinks it's appropriate, but for all practical purposes the enforcement of public legislation would be privatized.

Arbitrators will now have jurisdiction to make rulings that were formerly in the purview of an employment standards officer, a referee or an adjudicator. They will not be limited by the maximum or minimum amounts of the act. However, arbitrators lack the investigative capacity of the ESOs and may not be able to match the consistency of result that the act has had under public enforcement. Most important, employers could argue that as boards of arbitration do not have the critical powers to investigate whether particular activities or schemes were intended to defeat the intent and purposes of the act and its regulations, such cannot be determined. In such circumstances, unionized employees could well be left with no recourse whatsoever. This is particularly evident in cases of related employer or successorship provisions of the act. It's difficult to see how such provisions can be applied when the successor or related employer may well not be a party to the arbitration procedure.

Enforcement for non-unionized employees in sections 19 and 21 of the bill and sections 64.3, 64.4 and subsection 65(1) of the act. With these amendments the Ministry of Labour is proposing to end any enforcement in situations where they consider that violations may be resolved by other means: namely, in the courts. In other words, the amendments would download responsibility for enforcement of minimum standards for non-unionized

workers. Employees would be forced to choose between making a complaint to the employment standards branch or filing a civil suit in the courts. Responsibility for enforcement is also downloaded on to non-unionized employees by limiting the amount recoverable through the employment standards to under \$10,000.

I found this one difficult to understand, that you could limit the amount of liability, although the debt might be a lot higher. In fact, currently there is no limit on what's recoverable. What an employer owes an employee is generally what he has to pay. That seems like a good way. It's how I have to pay my debts.

0910

An employee who files a claim at the Ministry of Labour for severance and termination pay is precluded from bringing a civil action concerning wrongful dismissal and claiming pay in lieu of notice which exceeds the statutory minimums. The effect of these amendments is that those employees who have chosen the more expeditious and cost-effective path of claiming through the ministry will have to forgo any attempt to obtain additional compensation through the courts. Legal proceedings are notoriously lengthy and prohibitively expensive for many, even though they may be entitled in common law to more than the statutory minimum under the ESA.

Just as in the provisions barring civil remedies in section 64.3, there are mirror provisions in 64.4 precluding an employee who starts a civil action for wrongful dismissal from claiming severance or termination payments under the act. Other provisions are also prohibited under the act once a civil action is started, such as an employer not paying wages owed, failure to comply with successor rights in the contract service sector etc. Employees who initiate a claim but decide they no longer wish to pursue their civil suit don't appear to have even the two weeks' time limit to change their mind. Rather, they appear to have no right at all to reinstitute a complaint under the act.

Maximum claims under section 21 of the bill and subsection 65(1) of the act. The amendments introduce, as noted above, a new statutory maximum amount that an employee may recover by filing a complaint under the act. This maximum of \$10,000 would appear to apply to amounts owing in back wages and other money such as vacation, severance and termination pay. There are only a few exceptions, such as for orders awarding wages in respect of violations of the pregnancy and parental leave provisions and unlawful reprisals under the act.

The problem with implementing such a cap is that workers are often owed more than \$10,000, even in the most poorly paid sectors of the workforce such as foodservices, garment workers, domestics and others. Indeed, workers who have been deprived of wages for a lengthy period of time are the very employees who will not have the means to hire a lawyer and wait the several years that it will take before their case is settled. In effect, therefore, this provision will encourage the worst employers to violate the most basic standards while at the same time compounding the problems for those workers with meagre resources.

I assisted a friend who is developmentally handicapped to recover wages from an unscrupulous restaurant owner

who had hired him to work 35 hours a week for \$25 and he could have his lunch there: soup and a sandwich. I haven't included in the brief some of the disgusting tactics that employer used to discourage this fellow from pursuing his rights. In fact, before he knew that I had an official capacity he was really rude to me as well. My friend's claim amounted to less than \$300 and took almost a year to resolve.

I can tell you that he would not have been able to pursue that claim without a lot of help and assistance, and even in spite of that he was really terrified the day of the hearing because he was going to have to go and face that man he had worked for. He was nervous about having an adjudicator there and so on.

People who have handicaps of various types are even more disadvantaged by this change in the bill. This chap had a friendly ESA officer plus myself as his case worker helping him; he would never have pursued it otherwise. He didn't realize that employers can't enter into a deal with you that's contrary to the law.

In my opinion, the government should be aggressively pursuing employers who exploit and humiliate workers rather than withdrawing the few sympathetic supports that currently exist.

Regarding the use of private collectors, section 28 of the bill, new section 73 of the act, a fundamental problem with regard to the act has for some time now been the failure to enforce standards. This is no less true with regard to collections. The most frequent reason for the ministry's failure to collect wages assessed against employers has been the employers' refusal to pay. The answer to this problem, according to the proposed amendments, is not to start enforcing the act but rather to absolve the government of responsibility to enforce the act by farming the problem out to a private collection agency.

In addition, the employment standards director can authorize the private collector to charge a fee to the persons who are owed the money. Should the amount of money collected be less than the amount owing to the employee or employees, the regulations will enable the apportioning of the amount among the collector, the employee or employees and the government. Where the settlement is under 75% of the amount owing, the collector is required to obtain the approval of the director, but this still allows the collector incredible leeway, if not outright abuse, with someone else's money.

The danger here is that even persons, like my friend, whose earnings put them below the poverty line and who are owed money under the act could well be required to pay fees to the collector. A minimum-wage worker at \$6.85 an hour, for example, could not only receive less money than is owed but also have to pay for it to be collected. Surely this raises ethical questions for the drafters of this bill.

We would suggest that while such an approach may be appropriate in commercial transactions, it's neither morally justified nor appropriate under these circumstances. We want the system of public enforcement to be maintained and improved, not eroded.

The London and District Labour Council is gravely concerned that employees, particularly the most vulner-

able, will be pressured to agree to settlements of less than the full amount owing as collectors argue, if only for reasons of expediency, that less is better than nothing. Having at the same time to pay a collector amounts to nothing less than legalized theft.

The limitation periods: Under section 32 of the bill, section 82 of the act, workers who fail to file within this new time limit will have to take their employer to court to seek redress. The burden of cost will also have to be borne by an employee in such circumstances as that the Ontario legal aid plan has been scaled back and no longer covers most employment-related cases. In contrast, the ministry still has two years from the date the complaint is filed to conduct their investigation and a further two years to get the employer to pay moneys owing. In other words, an employee having made a complaint under the act could wait up to four years before receiving their money, and then only the part of it that the collector collects minus the user fee. That the government can rationalize such amendments as facilitating or streamlining procedures is almost beyond comprehension.

0920

In conclusion, I would say there are several positive amendments that the labour council can support. However, in general, these changes impact the most vulnerable people in the workplace: the unorganized. It undermines their already precarious position.

The other thing is that the attempt was made to introduce these changes as if they were really insignificant, just housekeeping changes. We believe they should be included in the overall review so they can be openly debated and discussed. Thank you for your attention.

Mr Pat Hoy (Essex-Kent): We don't have too much time here, but you speak about non-organized persons and the effect this bill will have on them. You've cited an example of the disabled person who was clearly being duped by his employer. Do you think this act will have more significance on the unorganized worker or the organized worker? I'll let you answer that one.

Ms Anderson: I believe it's going to impact both, but certainly unorganized workers are often less aware of their rights than organized workers. They also don't have the support of the elected representatives of their union. I can tell you that when that investigation was done in that particular restaurant, we knew of another woman who was also being exploited in a similar fashion. There was no complaint and the ministry did not investigate the fact that there was another handicapped person working there under similar circumstances.

Mr Hoy: Do you have any recommendation on how to improve the awareness? I know, not necessarily through my riding office but from people I meet in the riding, that there seems to be a lack of awareness, particularly of their rights to severance pay. Do you know how to recommend that we improve that?

Ms Anderson: It certainly appears that when the government wants to educate the public, it does a very good job of it. I think that they can do an equally good job of educating workers, both in unorganized and organized workplaces. Public education is something the government could undertake to make sure that people do know what their rights are. They did it with the Landlord

and Tenant Act and they do it with other things they want to promote. I don't see why they couldn't do it with this act as well.

Mr David Christopherson (Hamilton Centre): Thank you for your presentation; I appreciate it. I can tell you that the presentation you've made on behalf of workers in the London area is very similar to what we've heard in Toronto and Hamilton and Kitchener and what I expect we'll continue to hear as we move across the province.

I'd like to take the short time we have to begin exploring an area we haven't yet talked about in any of the locations in any great detail, and it's the paragraph at the bottom of page 5, where you talk about a concern you have about privatizing the collection of money owed from employers. Your concern is that the most vulnerable might "be pressured into agreeing to settlements" — to use your wording — "of less than the full amount." There's protection in here that says that no settlements are binding if they're entered into as a result of fraud or coercion. But as Professor Fudge pointed out, that at least shows the government contemplates the fact that this kind of pressure can be brought to bear. Can you just expand a little on what your concern is in terms of the kind of pressure employees might face, particularly the most vulnerable kinds of workers?

Ms Anderson: It boils down to the same reason that people take their cheques to the cheque-cashing Money Mart and pay the 4% or 5% or whatever it is the Money Mart charges to get them cashed — because they can't get them cashed in a bank without having an account that has more than the cheque is worth in it. There's a real sense that people who are in dire circumstances want the money now. They can't afford to wait, even if it might mean that they would get a better settlement. All the collection agency has to do is say: "We can get it for you Tuesday, but you're only going to get \$150. If you wait, you might get \$500." It's very clear that there doesn't have to be a lot of coercion to persuade a person with no money that they can get some immediately. I've seen it with the Money Mart cheque-cashing thing; also with people who take their income tax and sell it, discount it with people who will do your income tax and take a percentage as well. We see it all the time with people on low incomes.

Mr Jerry J. Ouellette (Oshawa): Thank you very much for your presentation. I'd like to explore a little different path. You mentioned employers who aren't willing to pay. Do you feel that it would be advantageous if the government would look at shutting down businesses in these cases and thereby putting all the workers out?

Ms Ellis: I don't think it's an issue of shutting down the business and putting all the workers out of work. In many cases, these people who are applying have already left. In fact, Professor Fudge's paper explains that over 90% of them have already left their employment or their employer has gone bankrupt. Those are the people who are seeking redress under the act. Those people already don't have a job, so you're not putting any employee out of work here. But that person who was the employer should not be allowed to go into another business until they have paid their dues to the business they previously owned. We see that happen all the time — it's opened

down the street under another Ontario numbered company and he just keeps doing it and doing it.

Mr Ouellette: So this is just referring to businesses that have gone out of business. What about businesses that are currently operating where we have problems collecting from the employer to pay the employee? Should we shut down that business?

Ms Ellis: Employers who have businesses have assets, and just as we in the Hydro commissions can put a lien against a business to the city for payments, there should be some avenue of recourse for the government to put a lien against the assets of that company to pay the employees what's due to them.

Mr Ouellette: But still keep the businesses open so that we can have employees in there?

Ms Ellis: I would certainly think so. Our job is to keep employees working, it's not to put them out of work, but it is also to keep them working as long as they're getting wages.

Mr Ouellette: Obviously we're having difficulty in that we're only collecting, on average, 25 cents on the dollar. We're making an attempt to recoup up to 75% at least, and then the employee has the ability to say whether they want to bargain on the last 25% with a collector.

Ms Ellis: You have to understand logically that what Edna was talking about is exactly what's going to happen. The director is going to offer certificates to people left, right and centre because the collection agencies, in many cases, and I would think the majority of cases, will not be able to collect over 75%.

Mr Ouellette: We're trying to find a way that we can get employers to pay when it's required. Currently, the system is not working. What we're proposing is another opportunity and I was just asking if you felt that shutting down businesses would resolve the situation.

Ms Ellis: No.

The Chair: Thank you all for taking the time to come and make a presentation before us here today.

LONDON CHAMBER OF COMMERCE

The Chair: Our next group up is the London Chamber of Commerce, Mr Gordon VanderLeek and Mr James Thomas. Good morning, gentlemen.

Mr Gordon VanderLeek: It's a pleasure to be here and bring the position on behalf of the London Chamber of Commerce. I trust that our brief position paper is being or has been circulated to you, so we don't propose to read it — you may do that at your leisure — but just highlight a few aspects of it and be available for questions at the conclusion. I'm certainly also pleased that Jim Thomas can be here to assist in the presentation. He will speak to some of the specific provisions of Bill 49.

By way of background, the London Chamber of Commerce, as part of the chamber movement in general, is the largest and most broadly based business organization in London. If you look through our membership, we have individuals who are working out of their home who are members of the chamber as well as some of the city's largest business and service sector organizations. So we feel we come forward today speaking on behalf of a wide variety of businesses.

The chamber members employ nearly 50,000 people in the London and surrounding area, so clearly we take note of any legislative changes to employment standards or to workplace legislation. As indicated in the brief, we have appeared in the past to speak on issues of workplace health and safety, labour relations and also on employment standards. We appreciate the opportunity to be here today.

Looking at the context of the legislation, we support the government's efforts to reform the legislation. If you look to the nature of the working relationship and the employer-employee relationship over the past number of years, there's been significant change. I think that's a given. There's been much that has changed in our society, and the workplace has been no exception. The chamber of commerce supports the effort to bring reform and necessary updating to the legislation. We support the comprehensive review process and the two-stage process, understanding, of course, that we look forward to the second phase of the reform process.

In many instances, and we'll highlight a number of those today, we feel that the legislation as it currently stands, having gone through some piecemeal amendments over the years, is becoming increasingly complex for the business owner and, as we've reported in our report, non-user-friendly.

With that, by way of background, I can perhaps ask Mr Thomas to highlight for the members here the specific aspects of the legislation that we'd like to make commentary on today.

0930

Mr James Thomas: Thanks for the opportunity to appear before the standing committee. Again, we have recently conducted a survey of our membership in the London Chamber of Commerce to see what their concerns are with regard to issues surrounding government programs. The number one thing that comes out in the survey of employers in our area when we talk to them is the amount of red tape and duplication of government effort they encounter as an employer on a regular basis.

So these amendments, which we see as streamlining the process, are indeed welcome by our membership and they make a lot of sense to us. In particular, things like limiting the recovery of money to a six-month period instead of it hanging for a two-year period, as currently exists, over an employer's head makes a lot of sense.

The elimination of duplication of claims I think in particular is an area that's extremely important to employers, particularly small employers who may have made an error, find it incredibly complex to have to go through at least two or three different forums for hearing a complaint. In fact, we see on a regular basis people who may file claims in unionized environments in three different forums. They may file a grievance, they may go to the Employment Standards Act and they may file a small claims action as well just to see where they get the best deal, if you will. So we think reducing the duplication of claims is a very welcome part of the changes to the act.

Extending the appeal process, a second item that we think makes a lot of sense, allows for a longer period for the employer to consider, and the employee if they want

to, appealing an employment standards ruling and to perhaps negotiate a settlement or perhaps take the full merits of the case into consideration before deciding to appeal or not to appeal.

Those are the three main areas that I believe are important to our members. While we recognize that there are other parts to the act that have been changed and streamlined, we thought it would be important that we comment on those three areas: the reduction in the duplication of claims, limiting the recovery period and extending the appeal period. So we welcome the government's proposals under Bill 49 in these areas. Gordon, you may want to add a comment.

Mr VanderLeek: Just in conclusion — we're available for any specific questions that you may have — we look certainly with interest to the second phase of the reform process and the issues that we anticipate may arise there and we encourage the government to proceed without any undue delay in pursuing the overall reform of the legislation. This is certainly a step in the right direction, as indicated, to avoid duplication, to hopefully reduce the cost that is currently in place for the government to process that, and to place expertise in the appropriate area and to define the rules.

In looking at the changes that are proposed, we trust that they will define the rules under which the employer-employee relationship exists in Ontario, and that if both sides know the rules they're playing with, that bring some certainty to the environment and would also improve the environment for doing business in Ontario generally. Perhaps we can stop at that point and accept any questions.

The Chair: Thank you, gentlemen. That leaves us 12 minutes, four minutes per caucus. We'll start this round with Mr Christopherson, the third party.

Mr Christopherson: Gentlemen, thank you for your presentation. The minister has stated from the outset that Bill 49 is simply minor housekeeping. Do you agree with the minister?

Mr Thomas: If I could comment on that, I think they're not major changes that we're seeing in terms of the things that need to be reconsidered in the employment relationship. If you take a look at the increasing prevalence of home work and the impact on the Employment Standards Act, there are a whole range of things that need to be looked at. There are contradictory areas of the act that need to be reviewed. The issues surrounding overtime need to be given a close look. So I think a more comprehensive review of the Employment Standards Act in general is warranted.

Mr Christopherson: I think that's a yes.

Mr Thomas: Yes.

Mr Christopherson: I note that you make the statement, as have the other chambers of commerce that have made presentations, that you believe the changes do not impact on the act's protection of minimum employment standards, and I'd like to just pursue that a little bit. I would suggest to you that there have been minimum protections that are being taken away under Bill 49, such as the cap of \$10,000 where none existed before. Regardless of the rationale for \$10,000, the fact is there wasn't a cap before and now there is one; also the fact that

there's now going to be a minimum and one will have to cross a minimum threshold before the ministry will follow up on a claim. Both of those are restrictions on rights once held by the employees.

A suggestion that both of those can be remedied by going to the courts now involves employees paying money to hire their own lawyers and perhaps take time off work, which they currently don't have to do under the existing legislation. I have some difficulty understanding how the recognized common sense of the fact that those are rights that are now being taken away reconciles with what you're stating: that there's no impact on the minimum rights that employees now enjoy. I see quite a discrepancy there. Could you explain that, please?

Mr Thomas: I think what we're seeing is a streamlining of the employment standards process, which is valuable to both the rights of an individual to make decisions and understand what decisions they are making in terms of the route of getting redress. I don't see that as a major problem.

Mr Christopherson: But if you had a right to have a problem that you have resolved by a government function, and that function is no longer there and you have to pay out of your own pocket to resolve the same problem, have you not lost a right? Have you not lost something? Because these employees are certainly losing rights that they now have under the existing law with Bill 49.

Mr Thomas: It's a change in the way the rights are applied, yes.

Mr Christopherson: It's a loss. It's costing them more money to get the protection they once had covered by the ministry. Let's keep in mind this is money that employees are owed. This is not some treasure hunt they're after; this is money they've worked for, that they're owed. Now they're going to have to pay money to get that money back with this law, when before they didn't have to. I have trouble understanding how you can suggest that the employees haven't lost something.

Mr Thomas: We view it as a positive change in streamlining the process; that employees have different ways of going at things now. I don't see it as the loss that you're claiming.

Mr Christopherson: With great respect, really, and I mean this very sincerely, I would suggest if the shoe were on the other foot and there were a cost being incurred by business to protect their legitimate rights that they didn't have to incur before, you'd be screaming from one end of this province to the other.

0940

Mr Thomas: I don't have a comment about your comment.

Mr Christopherson: I don't see any further point.

Mr Joseph N. Tascona (Simcoe Centre): I have a couple of questions I want to ask you. The first question is, would you be in favour of electronic filing of orders to pay, including the monetary payment?

Mr VanderLeek: Perhaps I can speak to that. I think in general it's laudable when government legislation keeps pace with the manner in which individuals communicate, and it's clear that in the 1990s the electronic form of communication is one that is becoming more acceptable. Subject to appropriate safeguards for that type

of technology, I think it's laudable that the government look to those avenues to streamline the system so that we don't have an archaic system but we have a government system which is efficient and most cost-effective from the perspective of the taxpayer. Certainly if the electronic forum accomplishes that, then we're in favour of that in terms of reducing the cost of government, which ultimately is for the benefit of the members of our society.

Mr Tascona: There's one other area that I want to explore. One of the big problems we have, once the act is enforced, is the collection. Presently, the collection record is about 25 cents on the dollar. There have been some comments in terms of how the collection procedures are done. One suggestion in this legislation is to do it through private collection, but there are other mechanisms that might be considered. One area where they do collections is under WCB with respect to assessments. They use such mechanisms as liens, and they take money out of bank accounts. I'd just like to get your view on whether that would be a method that could be considered and what the business community would think of that in situations where we're dealing with employers that just are not going to pay and they just are refusing.

Mr Thomas: If we currently are experiencing a 25-cents-on-the-dollar recovery rate for claims, anything that we can do to make that more effective makes some sense. I don't have a problem in seeing how that would work, but I would like to take a closer look at it before agreeing to it.

Mr Tascona: WCB has an approach that it uses — you'd be familiar with that — in terms of collecting its assessments. That's one method that is used with employers, and it's been accepted practice for many years.

Mr VanderLeek: In terms of additional commentary on that, the chamber has always supported legislation which provides clear rules and clear understandings as to what the rights and obligations of the employer are. If there are moneys that are legitimately disputed but after adjudication are determined to be owing to an employee, then they ought to be paid and the rules ought to be followed. The chamber has always stood for that. Whatever system is in place in the specifics of enforcement brings integrity to the system and bodes well, on a general basis, for saying that in Ontario we play by defined rules and we expect people to live up to those rules on both sides, both employees and employers. So if we have an efficient collection system, presumably that would ensure that there's confidence in the system and confidence in government, and it creates a positive business environment.

The Chair: Moving to the official opposition, Mr Hoy.

Mr Hoy: Thank you for your presentation. You mentioned that you see the necessity of discussing this bill in total and you're waiting for the second phase discussion paper. Do you think it would have been better to discuss this bill and ramifications as it applies to employers and employees all at once, rather than breaking it out in two separate pieces like this, for clarity for both the employer and the employee? There'll be another second round; we don't see the whole package in front of us as to what the government is intending to do.

Mr Thomas: My understanding of the second phase is that they will address some of the substantive issues in

the act, that we need to take a look at those as one thing so the administrative issues we're dealing with at this point don't slip by the boards. It's important to get the administration right as well. I see these as more administrative than the real guts of the Employment Standards Act.

Mr VanderLeek: The other thing I would add to that is that we suspect there will be more attention brought to the second phase of the reform process. Perhaps the consultative process would be longer, more parties would be interested in participating in it and it would take a greater amount of time. Having said that, if the government can achieve certain cost savings immediately through administrative change, we applaud that and say that's money we could save now while we continue on the overall reform process. In that sense, the chamber is here today to say that we support the move to make immediate savings in streamlining the process and sending a clear signal to employees and employers that they're serious about reform and are beginning to take action. I think that process is suitable, and we'll deal with the substantive portions in the second phase as a package, to address the issues there.

Mr Hoy: Your comment that there may be more interest in the second phase is probably true, but I want to say that there is no lack of interest in this first phase. Our agenda per day, no matter what city we are in, is quite heavy. The interest is quite pronounced.

You did mention some specifics of what the chamber likes about the bill, in particular the elimination of duplication, the recovery limit at six months and the extended appeal periods. What's your feeling about the \$10,000 limit that is proposed, notwithstanding the fact that 96% of the claims are under \$10,000? It brings to my mind that the \$10,000 limit seems to be misplaced in regard to the fact that 96% of claims are under \$10,000 in the first place. It seems to put a restriction, in my mind, on that 4% of persons who might have claims that exceed that amount. Do you have any opinion on the \$10,000?

Mr VanderLeek: With regard to the limit itself, we start from the premise, the fact that has been produced by the government, as you've indicated, that we're dealing with claims in excess of \$10,000 as being 4% of the caseload. Our general observation would be that those individuals who have that much at stake would be prepared to deal with their claims through the processes that are available, and to that extent we support the government's efforts to direct what we can call its limited resources, because it cannot do everything, to those who are most vulnerable and who need the services the most. It provides some certainty to know that if you're above that amount you can proceed in a certain area.

We'll hopefully streamline the process such that more cases can be processed and more people can be assisted by the staff of the Ministry of Labour as they do the day-to-day work under the legislation. From an administrative perspective, I see the cap as simply providing a definition of where they want to focus their activities, much the way that a business would focus its activities pursuant to a business plan, saying, "We want to help people in these areas the most and focus our efforts." Presumably those

who have claims for more than that have the opportunity to seek redress. I certainly don't agree with the position that rights are being taken away. The forum for exercising those rights perhaps is being amended and streamlined and clarified.

The Chair: Thank you both for taking the time to come before us here today. We appreciate it.

0950

AMERICAN FEDERATION OF GRAIN MILLERS, LOCAL 154

The Chair: That leads us to our next presentation, which will be from the American Federation of Grain Millers, Local 154. Good morning.

Mr Pat Blaney: I'd like to thank the committee for having the opportunity to speak this morning. I'd like to do something maybe a little more novel than I've heard so far, and that is to tell a story that has a happy ending, fortunately. It is really the story of our experience, and I'd like to draw some conclusions at the end to illustrate.

My name is Pat Blaney, I'm the president of the American Federation of Grain Millers. We represent 569 hourly employees of the Kellogg Co here in London. The Kellogg Co has been established in our community since the early 1920s. It has gained a reputation as a solid employer, providing excellent wages and benefits, with minimal layoffs and a relatively constructive labour relations environment. In short, it's a fine place to work.

As well, our facility has the distinction as the low-cost producer of ready-to-eat breakfast cereal inside the Kellogg organization. In the last number of years we have established consecutive record profit levels year to year. We are proud of our plant and the wide variety of domestic and export products we produce.

Our history, however, has not always been that promising or as constructive. We believe that in the absence of the specific safeguards established under the Employment Standards Act our business success and working environment would be radically different from what we see today.

Historically, the cereal business has been seasonal in nature. Layoffs for junior employees were significant and longer-term due to the nature of the business. The language in successive collective agreements has evolved around these two premises; that is, the seasonal nature of the cereal business as well as the day-to-day fluctuations of the work.

More than 25 years ago, Kellogg applied for and obtained a permit under subsection 20(1) of the Employment Standards Act. The permit, known as the basic permit, gives the company permission to exceed the hours-of-work limits in the act — eight hours in a day and 48 hours in a week. Of course, the permit only gives the company permission to ask the employees to work in excess of those hours. The permission can be given in law by either the employee or the employees' agent, in this case the union.

The various collective agreements made reference that under given circumstances employees could be forced — more commonly known as compulsory overtime — to work overtime to support operational requirements, and it was generally not abused then.

Throughout the 1970s it was apparent that the nature of the business was changing, becoming less seasonal and requiring an increased need for staffing through the weekends. There was growing concern in the summer months, specifically by junior employees being forced unduly. I think it would be safe to say that most people begrudgingly accepted the reality of the business and that this was going to take place.

However, on February 9, 1982, the company announced plans to construct and develop a massive state-of-the-art cereal facility that would be known as Project 2000, or P2000 as we refer to it here in London. The project was presented as a leap from the traditional cog-and-pulley technology that was in place at the time to a futuristic automated production system that would bring, among other things, a stable scheduling practice that would marginalize the need for forcing, job ownership and job security through better business.

By 1985 it became painfully apparent that our P2000 plant expansion had some significant oversights in developing our technology. There was a real concern by both parties that if we did not get Project 2000 up and flying — it was referred to as the white elephant or the albatross by some senior officials — if we did not get it to full production we would be in jeopardy of having the plug pulled on the whole project, and there was some real concern about the long-term viability of the facility at all.

In 1987 the company applied for and obtained an additional permit under subsection 20(2) of the Employment Standards Act. This additional permit permitted the company to exceed the scope of the subsection 20(1) permit. By this point in time, the forcing of employees to work overtime to support the operation had completely gotten out of hand. It had become a common occurrence for the company to default to compulsory overtime, which it believed it had the right to institute, to support the business objectives of the day.

However, before the company utilized the subsection 20(2) permit, it consulted with the union and obtained the union's support. The support was obtained in large measure because the company agreed to ask individual union members whether they were prepared to agree to work overtime. Those who agreed, by signing the form, could then work additional overtime for which the company could ask pursuant to its subsection 20(2) permit.

However, it quickly became apparent that the issuing of the subsection 20(2) permit was not a solution and did little to alleviate the instances of forcing employees to work overtime in general. If anything, the additional permit only allowed the company to short-staff and maintain increasing plant production goals that were captured through scheduling excessive overtime requirements.

The resulting undue stress took its toll on marriages, families, personal relationships and in an increased incidence of substance abuse. A case in point — and there are many of them from this point in time — is that on the weekend of June 11, 1988, we had a member who was scheduled to work, against his protest, the Saturday of his wedding. No one really ever expected this fellow to show up, but through the attendance control process

we have he was going to be considered AWOL all the same.

Our absenteeism rate was out of control. Employees who were forced to work extra shifts on weekends often would take time off during the week, which in turn would jeopardize the production and create a vacancy which was, more often than not, filled by forcing again. It was a catch-22.

In 1988, our plant morale was at an all-time low. Members were frustrated and exhausted and had had enough. We experienced our first strike in our 50-year history as a labour union. Subsequent to that, union-management labour relationships became rigid and reactionary with little trust or good faith between the parties. The company held tightly to the notion that it had to have the flexibility and security that compulsory overtime provided to meet the business opportunities of the future. As well, it was professed by the company that the new technology now in place, with the associated support training, would eventually reduce the need for excessive overtime.

The reality was quite the reverse. There was continual pressure to drive the business to offset the considerable capital investment in the project. The complexity of the new technology and operation in our facility required far more intensive support training than originally envisioned. Quite simply, it's never-ending and it's perpetual today.

Throughout all the union-management scheduling initiatives and all the joint task force debriefings, forcing of excess hours continued unabated. Every occurrence was explained away as the result of one unforeseen business pressure or another that necessitated the forcing to take place.

In the fall of 1989, the union began what turned out to be an arduous process through Mr Mulligan of the employment standards branch of the Ministry of Labour. It was our intent to wrestle from the company both the subsections 20(1) and 20(2) excess-hours permits. We intended through this process to compel the company to sit down and work jointly with the union towards alternatives to the working conditions as they related to forced overtime.

Initially, we were successful in establishing limited restrictions on forced overtime through joint discussions. The parties initiated and developed a "weekend worker" concept that enabled a limited number of employees to work Saturday and Sunday only. This, in itself, would ultimately fulfil the staffing requirements and flexibility needs for a seven-day-a-week operation. As well, we jointly developed the concept of "banked overtime," which allowed employees who volunteered to work overtime to take banked paid time off work at a more convenient time later on.

On December 20, 1990, the parties sat before arbitrator Maureen Saltman to bring to conclusion the precise scope of the contractual language that pertained to the company's ability to force employees to work excess hours. I've enclosed a document there. The decision of the arbitrator, as it pertained to the Employment Standards Act, ultimately compelled the parties to jointly work towards the total elimination of forced overtime by the 1991 negotiations.

Today, we are the envy of our US counterparts, which by the way still work under forced overtime; I should say "struggle" under forced overtime. Our facility has been recognized for numerous achievements from production volumes to exceptional safety standards. We operate seven days per week without forced overtime. Plant absenteeism and lost time are at an all-time low and below the national average. The weekend worker crew has afforded the company the needed flexibility in scheduling production requirements. We continue to work jointly on numerous plant initiatives that are showing tangible results. What would have been considered unthinkable in 1989 has become the norm today. We are very proud of what we have achieved.

We have by no means a perfect working environment, but it's a far cry from what it could have been if we had not had the assistance and safeguards established under the Employment Standards Act. We have managed to set right, for the success of everyone, the deteriorating situation we were unsuccessful in correcting through successive contract negotiations.

In conclusion, subsection 64.5(1) of the act, Bill 49, will effectively dismantle the enforcement authority of the Ministry of Labour that, in our example, helped to turn around a deteriorating situation we alone were unable to. Far too much of the burden and associated cost of policing and enforcement will be saddled on the backs of labour. We're a small union, as unions go. We can't afford this.

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There also seems to be some mystique that puts too much reliance on the negotiations process and far too little consideration on the inherent inequalities of the bargaining powers of the parties. I cannot stress enough the importance of standards and the importance of the ministry and its authority to uphold and maintain those standards. In our example, regardless of the process we had to undertake to ensure our rights in the Employment Standards Act, we were assured as citizens of this province, as well as union members, of the same protection through the Employment Standards Act. The act as proposed in 64.5(2) creates two different systems of protection: those that are associated with unions, and everybody else. It's wrong; it's fundamentally wrong.

At its heart, this bill will not promote or foster good labour relations practices. The whole tone of subsections 64.5(1) through (5) has mean-spirited implications to it. As with the grievance procedure that this act will promote, it will by default increase a confrontational environment in the workplace. Leaders in industry, as does Kellogg, recognize the significant role and contribution healthy labour relations play in our ability to compete on a world market — and we do compete on a world market.

I'm deeply concerned by the long-term impact this legislation will have in impeding the conciliatory environment we have jointly cultivated, along with our business success at Kellogg. You cannot have one without the other.

Finally, one last point that I picked up this morning when I was looking over the bill. I'm puzzled by two phrases — one phrase, actually, that's in two different

spots — in 64.5(2) and (4), that to the best of my knowledge don't appear anywhere else in the Employment Standards Act. It's a new quote: "including an employee who is not a member of the trade union." They're speaking about the obligation to represent. I couldn't for the life of me imagine how that would ever apply in environments like ours unless we were representing some of the salaried staff. I'm bothered by where we're going with this.

The Chair: That leaves us two minutes for questioning per caucus. We'll start with the government members.

Mrs Barbara Fisher (Bruce): Just as a point of interest, could you please give us some idea of the number of employees in the London division?

Mr Blaney: As I stated, there are 569 hourly employees.

Mrs Fisher: Of those, given your experience of coming through to a happy end because of negotiation, during the course of that time, could you speculate, even, how many employees would have left this place of employment because of the condition that you were talking about?

Mr Blaney: With this expansion, we certainly went through a number of people who retired. If anything, other than through attrition, people weren't leaving.

Mrs Fisher: The reason I'm asking that question is, one of the things you don't mention that has been sort of a highlight, if you will, of the hearings to date is this issue of, once a person leaves, perhaps leaving in fear of other reprisals in the event they come forward with their concerns, we often find that perhaps the person is owed money. Collection is an issue that has been high on the agenda from other participating parties to date. Of those who left voluntarily, would you remember if you were part of the process in making sure those people were paid for any lost wages or outstanding vacation pay or those types of things?

Mr Blaney: As I started to say, Kellogg has been in London a long time. It's a reputable company. I couldn't ever imagine having that situation even arise.

The Chair: That's the time for the government side.

Mr Hoy: Thank you for your presentation. I can understand the fluctuation of the work that might occur at Kellogg, having been a farmer. During the period that you were having this extended overtime for many of your workers, was there any new hiring taking place?

Mr Blaney: There was hiring. Because of the expansion, what was initially considered or envisioned as — the phrase was a "turnkey operation" that would require far fewer people than were working there at the time. It was very manually intensive originally. It was considered that the population would probably drop — I'm trying to recall — probably 25%, but as it turned out, with technology you also need expertise and we were hiring highly skilled people at that time.

Mr Hoy: So there was some hiring, but yet you still had overtime problems.

Mr Blaney: We had a certain number of people who were retiring simply because the window of opportunity was right for them, maybe because of their age, they didn't want to take on the challenge of the new project. It was very sophisticated.

Mr Hoy: The company in question, is it involved in ISO 9000 or any other like program?

Mr Blaney: No, to the best of my knowledge they're not.

Mr Hoy: They're not.

Mr Blaney: They're aware of it; we've discussed it, but no, they're not.

Mr Hoy: Notwithstanding the fact that they're not involved in that, the quality at the plant was maintained, and the quality of the product, probably to their benefit if the answer was yes, even though workers were asked to maybe endure some hardships?

Mr Blaney: I guess you could appreciate, in the food industry, quality is an ongoing issue and it was certainly an issue by the union and the company through this time. A lot of things fall by the wayside. Quality is one of them that has always been monitored and, as I said, is perpetual. There were concerns.

Mr Hoy: Thank you for your presentation.

Mr Christopherson: Thank you, Mr Blaney, for a very helpful presentation.

On page 4 you talk about the fact that — this is the second-last paragraph on the page — "The company was holding tight to the notion that it had to have the flexibility and security that compulsory overtime provided." We know that although it's been withdrawn at this time, it's still alive and well to be resurrected later, the notion of being able to contract out of minimum rights.

Then, I jotted down when you said that you're a smaller union and you can't afford this, meaning if you got into that kind of struggle without that protection underneath — I'd just like to explore that a bit in terms of what you think would happen to either you and your members or a similar situation anywhere in Ontario where that right was now legally available to companies, and what would happen in a case where they start putting on the table serious concessions, not just to the better benefits that you have, but those fundamental rights that are now in the Employment Standards Act, and decided to take you all the way, including a strike, including using scabs, and were going to go for broke. What kind of situation would that put you or maybe a similar union in, if that became the law of the land?

Mr Blaney: Of course, initially, our fears would be that they would financially break us and that is our concern now. Ultimately, I am sure and I can see if legislation like this is pushed forward, you're going to see the positions polarized even more than they tend to be, you're going to see amalgamations of smaller organizations with larger ones and then you are going to have a very polarized work setting. As I said, with the mean-spiritedness that I read that underlies a lot of this act, you're going to have something that is not in the best interests of business and it's not in the best interests of labour.

1010

Mr Christopherson: Is there going to be a lot of confrontation, do you think; lead to confrontation, possibly violence, create real serious problems?

Mr Blaney: It certainly is and we were very close to that in the heyday of this, mainly before we used the act to try and get some semblance of order of what was

going on. The company truly believed at the time that it could not survive and there was lots of discussion going on about how irresponsible it was that the union would be trying to destroy this company. The contrary was true. We were trying to work with the company to make sure we could be successful. We recognize what's happening in the world, what's happening in the food industry with free trade and NAFTA, how we sit in North America as an organization, internally as well as externally, and we've thrived based on that.

The Chair: Thank you, Mr Blaney, for coming before us here today. We appreciate it.

LONDON AND DISTRICT CONSTRUCTION ASSOCIATION

The Chair: That takes us to our next group, the London and District Construction Association. Good morning. We have 20 minutes, as you probably heard me say to the last presenter, for you to divide as you see fit between presentation time or question-and-answer period.

Mr Jerry Fassaert: My name is Jerry Fassaert. I'm representing the London and District Construction Association. I'd like to thank you for this opportunity of speaking to the committee this morning.

As I'm sure you're aware, the construction industry has a number of exemptions to parts of the Employment Standards Act relating to hours of work, overtime, termination and severance. I note that Bill 49 addresses mostly administrative changes to the act, and further, that there will be a complete review of the act in the fall. However, it is our impression that all aspects of the act may be reviewed and discussed at this committee, and to that we propose to address the following:

(a) Exemptions for the construction industry found in regulation 327 affecting section 57, part IV and part VI; and

(b) part XIV, subsections 58(2), (3), (4) and clause (6)(c) regarding termination and severance.

The construction industry is unique and different from most static production-oriented industries such as automotive and mining. Our industry employs persons for relatively short periods of time on a particular site or project. When the project is completed or the work available for that particular trade is completed, then employment on that site is terminated. The employee may be laid off or transferred to another site to begin again. Parts of our industry are also seasonal. Although building construction is becoming less and less dependent on the weather due to technology, the part of the industry affecting roadbuilding and sewer and watermain construction is still seasonal to a high degree. Because of this uniqueness in this area of the industry, previous governments have provided exemptions to the act which are required by the industry to remain productive and competitive.

In regulation 327 of the act, you'll note that clause 2(c) exempts the construction industry from section 57 of the act referring to termination and layoff. Regulation 327, clause 4(d), exempts construction from part IV of the act referring to hours of work. Regulation 327, section 15, goes further and extends the hours of work

for roadbuilding to 55 hours per week and regulation 327, subsection 16(3), provides up to 50 hours of work per week for the sewer and watermain portion of the industry.

These three exemptions are extremely important to the industry. Due to its structure, normal termination and severance provisions do not work for either the employees or the employer. Due to the seasonal aspect of roadbuilding and sewer and watermain work, it is essential that the exemptions of these areas are continued.

Therefore, we request the continuance of the exemptions for construction as described in regulation 327. We further request that the sewer and watermain industry have the ability to work up to 55 hours per week, the same as the roadbuilding sector. In many cases, these industries work hand in glove and side by side. Fifty-five hours is a minimum requirement for both. This would require a change to regulation 327, subsection 16(3), to indicate 55 hours versus 50 hours.

Our other concern lies in part XIV of the act, specifically subsections 58(2), (3), (4) and clause (6)(e). I've enclosed appendix A, which describes those areas. As I have mentioned, the construction industry is exempt from the termination and severance portions of the act. There have been instances, however, where the construction employees working in fabrication shops have been treated differently from the regular construction employees who may be working on a site. The confusion arises through clause 58(6)(e), which is an exemption for construction employees where same work "at the site thereof." Those employees working at fabrication may or may not work at a site. However, their employment is necessitated by the existence of the project or site. They are equally paid and in many cases are working under the same collective agreements as the outside personnel. However, they are being treated by the enforcement bodies as manufacturing employees, when in fact they are construction employees.

We request that the language in clause 58(6)(e) be altered to reflect the true construction nature of these shop employees.

In summary, we look forward to the proposed complete review of the act in the fall, and again I thank you for the opportunity to bring our concerns to your attention.

The Vice-Chair (Mrs Barbara Fisher): Thank you very much for your presentation. We have just under five minutes per caucus, starting with the official opposition.

Mr Dwight Duncan (Windsor-Walkerville): Thank you for your presentation. You haven't addressed any of the specific amendments that are in Bill 49, but you have raised the question about — would you have thought it would have been better to have done this all at once, the review of the Employment Standards Act, the entire act? Because it's difficult even to address the concerns you've raised. We haven't had a chance to look at them. We'll certainly keep them in mind as the government proceeds with its discussion paper and eventually with legislation. Do you think it would have been a better project to have done this all at once?

Mr Fassaert: I don't think there's a problem with doing it in this fashion. It gives us a chance to express our concerns now and then there'll be a further review in the fall.

Mr Duncan: You like the notion of having the opportunity to present your views before legislation is drafted?

Mr Fassaert: Yes. I think it gives you an idea of what is going on out there.

Mr Christopherson: Like my colleague from the Liberal caucus, I don't have a lot to comment on, given that it's a fairly focused and specific presentation, and it is the first time this has been raised.

I would be curious — and I do not at this point know the answer — should this become a full-blown issue, whether or not it's likely in your opinion that the unions that represent many of your employees would have a different point of view on what you are suggesting, or is this one of those areas where there's a common front and a common interest?

Mr Fassaert: Certainly, I think the union representation would have a different focus. I'm not so sure if the membership would agree with that. Mainly I'm talking about the 55 and 50 hours. There's always a movement afoot in negotiations to reduce the number of hours of work. The reality is, the men now are not working 55 hours, they're working 50 hours, and I'm sure that the ability to work 55 hours would be there and the men would benefit from that, if it was there. Now, the way the construction industry is going, there certainly isn't any room to pay overtime, so the men are working 50 hours only and I think they would appreciate that ability to work those extra five hours. It boils down to an extra hour a day and certainly a lot can be accomplished in that hour.

Mr Christopherson: Are there any women in the industry?

Mr Fassaert: There are — some. Not a great deal, but all the unions have some women membership.

Mr Christopherson: Then I guess, based on what you've said, it's fair to say that it's likely there would be an equally balanced perspective that would be different than yours on this issue, and if the government decides this will be part of what they look at, in fairness, they the government will need to ensure that both sides of this particular point of view are thoroughly heard and discussed?

Mr Fassaert: I would agree with that.

Mr John O'Toole (Durham East): Thank you very much for your presentation. I just think the freshness of what you've told us this morning, the newness of it is important. It's important because it shows that indeed each sector, as the world of work itself is changing, has unique and specific needs; that sector being the home worker, that sector being the telecommunications worker or indeed the construction worker; each sector has unique and specific circumstances for their working conditions.

We've heard the rhetoric these last few days of hearings, starting on Monday. Gord Wilson addressed this as the big, bad business bill. We think that in fact this bill is an attempt to address those workplace changes that are so essential to be competitive. My question to you, representing the London and District Construction Association, are you prepared to work with the union leadership in this changing world of work and make those adjustments and changes that suit the needs of both the employer and the employee?

Mr Fassaert: I feel that in London there's a very good relationship between management and the unions and I find that the unions certainly have their membership's best interests at heart but are always willing to look at a situation that will improve the competitive nature of the companies that they represent also.

1020

Mr O'Toole: If I refer to a couple of sections here — and I may even refer to the previous presenter — where the workplace participants, that is, the leadership and management and union, worked out their differences, they may need mediators or facilitators or arbitrators to do that. If I look at the exemptions that currently exist, which are exemptions that have evolved specifically to recognize the unique nature and needs of the construction industry, they have been developed by some similar process —

Mr Fassaert: That's correct.

Mr O'Toole: — amendments to the legislation. I think it is negative, listening here to the presenters, that no change — the status quo — is acceptable. I think that's Ludditism or putting your head in the sand. The world of work is changing, would you agree?

Mr Fassaert: I do.

Mr O'Toole: The technology is changing, and the act has to be changed to respond to those changing realities.

I appreciate your sector bringing this to our attention. As you've said, part 2 of the hearings is a fuller, broader discussion and more of the meat of the issue than some of the administrative things we're trying to do here to expedite protection for the most vulnerable workers.

The Vice-Chair: The parliamentary assistant would like to speak. There are two minutes left in our time.

Mr John R. Baird (Nepean): Thank you very much for your presentation. I appreciate it.

I just want to put something on the record from yesterday, not involving your presentation though. It was a comment with respect to workers having access to the employment standards office in Kitchener, and I was given a number by a worker that they had trouble getting through to. I was able to reach the employment standards office there. Regrettably, it was the wrong number they had been given. In the phone book the correct number was indicated, but that's something we will certainly take back, to try to see if we can't go even beyond the call of duty to communicate clearly where people can phone for help.

The Vice-Chair: Thank you very much for your presentation this morning.

LIFE*SPIN

The Vice-Chair: I would ask the representative from Life*Spin to come forward, please. Good morning and welcome to our hearing process. I'd ask you please for the sake of Hansard to identify yourself and the group you represent.

Mr Andrew Bolter: My name is Andrew Bolter and I represent an organization called Life*Spin. I am director of community development programs at Life*Spin.

I'll give you some background of the organization so you can see the perspective from which we come.

Life*Spin stands for Low Income Family Empowerment*Sole-Support Parents Information Network. It's a community-based, non-profit organization which provides information about access to services and meaningful employment for low-income people.

We assist our clients in their dealings with government social service agencies and we aim to gain access to and share and promote the exchange of knowledge of social and community services that are available for individuals and families.

We're committed to creating an environment of trust, respect and self-empowerment within ourselves and our community. We treat all of our clients with respect, dignity and appropriate concern.

We're a front-line organization dealing directly with people who are poor, both the working poor whose numbers seem to us to be increasing and those who find themselves on social assistance. On a daily basis, we deal with fellow Londoners who are finding it impossible to find appropriate shelter, food, clothing, work, and cannot pay their hydro, gas or phone bills, if they can manage to get a phone in the first place. Our clients are people who are in a constant struggle to maintain the basic and fundamental necessities of life.

We are also actively engaged in supporting and assisting community development projects that will tap into the resources and talents of those in the low-income community who cannot utilize their talents, skills and energy because of a lack of opportunity and access to capital to start community-based businesses.

We believe that healthy communities need a truly local economy so that everyone in the community benefits. We believe that the fundamental economic problems in our society are caused by the increased concentration of wealth and not by the poor who seem to have become the scapegoats in this government's agenda.

It's interesting to note that many of our clients are referred directly to us from the constituency offices of local MPPs: Dianne Cunningham, Bob Wood, Bruce Smith and Marion Boyd. The Life*Spin phone number is also provided by the city of London to general welfare applicants during the application process. We see this as an endorsement of our organization by the province and the city of London, and we trust the government funding on which we have relied will continue to come to us so that we continue to assist the constituency offices and the constituents of our local MPPs and help empower the economically disadvantaged in our community.

From our front-line perspective, we see that things are getting worse for the poor in this province. There are more food banks right now than McDonald's restaurants. There are more children living in shelters in Toronto than single males. People are hurting as a direct result of the policies, choices and actions of the Ontario government, not only through the cuts to welfare but also other changes that have a huge and disproportionate impact on the poor and the most disadvantaged. We are seeing changes to workers' compensation, legal aid, the Landlord and Tenant Act — and rent review is on the table — removal of subsidies for public transit, deregulation of environmental standards, and today we are here dealing with the Employment Standards Act.

The proposed changes to the Employment Standards Act, on top of these other changes to programs and government services, are going to compound the detrimental impact of recent government actions on the poor. After reviewing the proposed changes to the employment standards legislation, we are at a loss to understand how anyone could imagine that anyone other than the employer is going to benefit from them. Perhaps the Employment Standards Improvement Act should be renamed the Employment Standards Removal Act. This would be a more honest title.

We also do not understand why, if the government is going to review the act and make what are described as comprehensive changes to it in the fall, these housekeeping measures are going ahead. If the government is inviting input into the process for what it terms housekeeping changes, then I trust we will be able to have further input into the hearings on the proposed comprehensive changes.

The fact is, the proposed changes we are addressing today are more than housekeeping; they are fundamental changes. To describe them as housekeeping is misleading. Surely the *raison d'être* of employment standards is to provide a basic level of expectation in terms of health and safety, minimum wages, maximum hours of work, overtime pay, public holidays, vacations, pregnancy and parental leave, equal pay for equal work, termination notice, severance pay and adjustment measures for pay by employees and employers as to minimum treatment of employees. This protects employees from employers who seek to take advantage of them.

If anything, the employment standards in Ontario have been low compared to the rest of the world. I don't know why we always have to compare ourselves with the US. In many European countries, for instance, there is a minimum annual vacation period of four weeks, and much more protection for employees generally.

I read in yesterday's paper — actually it was the day before yesterday — that the government is backing away from making employment standards negotiable under the collective bargaining process; at least it's doing so during this phase of the proposed changes. It would appear that it will be back on the table in the comprehensive round. The whole concept of negotiating employment standards in each workplace can only benefit the employer. The employer is in a position of power. This is especially so when people are desperate for work and especially so in non-unionized situations.

Simply put, employers have the power to hire and fire. The rise of unionism and collective bargaining was a direct result of employees organizing themselves in an attempt to address this imbalance of power and obtain fairly basic standards of employment. Collective bargaining has historically done much to raise the working conditions of unionized and non-unionized employees.

The existing Employment Standards Act provides a modest, minimum level of treatment of employees by business. The courts have interpreted these amounts as minimums and have often awarded much greater monetary amounts than those dictated in the act, especially in the areas of wrongful dismissal and severance. But the existing act has many problems. Much of this is due to a

lack of enforcement. Much of the money owed to employees by employers remains unpaid. It takes a long time for an employee to recover moneys owed. However, despite these problems, the act does provide basic standards that all employers must meet.

A critique of some of the proposed changes to the act: I'll start with the maximum and the minimum levels of claim.

There's a \$10,000 cap on claims. We disagree with any cap on permissible recoveries of money by an employee. Such a cap will only benefit employers. Even among low-income sectors — domestic workers or garment workers, for example — there can be claims in excess of this amount. Why should an employer who steals more than \$10,000 from their employees be let off? There is no logic to this. It goes against fundamental concepts of justice and the concept of damages in law.

1030

There should be no limit to the amount claimed. The argument that employees who have claims over \$10,000 or under a prescribed minimum can simply take the matter to court won't work. Firstly, who can afford to retain a lawyer and go to court? Certainly a low-income employee cannot. Legal aid will not cover employment law. A low-income employee will be forced basically to forgo their legal rights. It takes years to bring an action to trial in the civil courts of this province. Small Claims Courts will be tied up with litigation on any claims below the prescribed minimum.

Low-income employees will have no choice but to use the mechanisms available in the Employment Standards Act in order to protect themselves. The court is not an option. It is astonishing to us that this government can claim that the changes to the act will promote self-reliance. How can you be self-reliant when you have no access to justice and no means of asserting your rights?

It's interesting to note that while the maximum of \$10,000 is intended to be embedded in the act, which makes amendment more cumbersome, any minimums are going to be in the regulations, making it much easier for a government to simply make changes. Perhaps the rationale for this is that it would be easier for the minimums to be gradually increased to take more cases away from the responsibility of the ministry.

Limitation periods are being changed as well, with the proposed changes to them. Bill 49 proposes a six-month period during which a worker can make a complaint for any infraction by the employer of employment standards. Any investigation by the ministry will only go back six months. Money cannot be recovered if it became owing to an employee more than six months before the facts upon which the proceeding or prosecution was first based. This means an employer can breach the standards with impunity, knowing full well that they will be liable only for six months of infractions. The existing two-year complaint period is in line with most civil limitation periods, but these generally start to run when the plaintiff ought to have known the case they have.

Retention of a two-year limitation period is essential, given that while employed there is a huge disincentive to make a complaint against an employer. In the real workplace, employees who make complaints have no

protection from the employer against harassment and retribution, so they wait until they have another job or are laid off before they complain. Non-unionized, low-income workers are particularly vulnerable because typically the poor live from paycheque to paycheque and, as stated already, they cannot afford to take their employers to court. Furthermore, as employers are required to keep detailed employment records, it would be relatively easy to work out exactly how much the employee had been ripped off. The limitation period should not be changed to six months.

The provision giving the ministry two years to conduct its investigation and another two years to collect the moneys owing is bizarre. An employee could conceivably wait four years before receiving money that is rightfully theirs. Where is the administrative efficiency in this?

Now I'm going to talk about negotiation of employment standards, because that I think is on the agenda, at least long term.

It is our view that the provision for negotiation of employment standards is based on a misconceived notion that somehow, in order to compete in the so-called global economy, we have to provide a cheap labour pool. The statement by this government that "Ontario is open for business" says it all. "Open for business" means making political choices based on reducing the cost of doing business, thereby maximizing the profits of those corporations and businesses that choose to do business here. It has nothing to do with making our society more just, building communities from within, or ensuring that everyone has a reasonable home, food on the table and a sustainable, decent job.

In a situation where an individual is faced with a choice of work or no work, they are likely to accept working conditions and standards far below what is healthy and fair. Hungry people tend to focus on providing the next meal for themselves and their dependants rather than whether the plant they work in is safe or their health is suffering because of required long hours of employment.

This government has it backwards. We should start with the individual and the community and say, "What kinds of businesses will benefit us, give us a healthy and inclusive society in which everyone benefits from the economy?" That is the way this country developed and grew. Instead, governments are competing with each other in a frenzy of cutting and reducing, downsizing and deregulating so that the transnational corporate moneys that whisk around the globe — and there's a lot of money — from bank to bank flow through their own banks. Our provincial government seems to have bought into this frenzy. It's as if there's no debate: We have a global economy, globalization is a fact, and we have to do what other countries are doing. I think that's ridiculous. It closes the debate. The debate should remain open. It's very Chomskyst.

At Life*Spin, we see people caught up by these forces and feeling frightened, out of control and helpless before them. We don't see any signs of hope and opportunity. There are few jobs. Our clients join the ranks of people applying for the few jobs that come available in London. Governments are saying that it's the pressure of the new global market; their hands are tied; we have no choice.

Dignified work can provide dignity, but undignified work cannot. We need clear, non-negotiable minimum employment standards to protect the most vulnerable to prevent any erosion of our already very mediocre employment standards. We must also remember that rights are hollow if they are not enforceable. We have to be able to protect employees who assert their rights against employers who seek to take advantage of them.

We strongly oppose this government's efforts to lower employment standards. Instead the government should focus on ensuring that employers pay the money they owe to workers rather than giving unscrupulous employers the incentive to cheat.

This committee should recommend that Bill 49 be scrapped.

Mr Christopherson: Thank you, Mr Bolter, for an excellent presentation. I'm particularly moved by your reference to the Employment Standards Removal Act. I think that's a great phrase; quite accurate too.

I would also point out to you, when you say that after reviewing the proposed changes to the ESA legislation you're at a loss to understand how anyone could imagine that anyone other than the employer is going to benefit from them, it's interesting that every single chamber of commerce from every community has come in and defended the fact that they don't think there's any loss here to workers, that this maintains the standards that are there.

My question, though, to be specific, is to ask you to comment just a little bit more, because I'm seeing this more and more as a crucial part of this issue: You say on page 10 at the bottom that retention of a two-year limitation is essential given there is a huge disincentive to make a complaint against an employer. "In the real workplace, employees who make complaints have no protection," you go on to say, against employer harassment and retribution. We had a representative from the Kitchener-Waterloo chamber of commerce yesterday say that what this change will do is prevent an employee from "sitting on his can and mulling it over," as if to suggest that somehow there was some game-playing on the part of employees. Would you just expand on why you think this clause is so crucial, especially for the most vulnerable workers?

Mr Bolter: I'm not sure whether that gentleman in the chamber of commerce has ever been an employee of someone else or what kind of background he had in the workforce, but my only comment is that I think, whatever business you're in, if an employee makes a complaint against an employer, human nature being what it is, there's going to be a potential of a breakdown of relationship. Any complaint made under this act is going to be basically a complaint that, "You're ripping me off." People don't like to hear that.

The act, from what I can see, will not provide any protection for an employee who does that. Unless there's some kind of setup in which there are teeth in an enforcement mechanism that will enable an employee to say, "Well, I am being harassed," it's not going to work.

1040

Mr O'Toole: Thank you very much, Andrew, for a very sensitive presentation and appeal this morning. You

do justice to the people you're attempting to represent. Just asking a little background, how long have you been in existence?

Mr Bolter: It's been, I believe, five years.

Mr O'Toole: Five years; about the same the NDP were elected. Would you agree that the last five to 10 years have really seen a lot of difficulty? The economy, and I'm not blaming anyone, for a variety of reasons — well, perhaps you could explain to me: Why has the economy in the last five to 10 years really been in a downward spiral? Is it a world phenomenon? Could you respond to that?

Mr Bolter: I think I'd have to take about 12 hours to answer that question.

Mr O'Toole: Just quick — you know, we haven't got all day.

Mr Duncan: Mulroney.

Mr Derwyn Shea (High Park-Swansea): Trudeau.

Mr Bolter: I would say it's choices made —

Mr O'Toole: Shouldn't we do something?

Mr Bolter: — by governments.

Mr O'Toole: Exactly right.

Mr Bolter: This government should pay attention to that.

Mr O'Toole: I think so. As we start our first year of mandate under way, I think you're right to say that we do want people to have jobs and dignity. When I look back to the travesty, and I have five children, the future has been diminished; the future has been spent for them. We've doubled the debt. We paid better benefits than any other province. Did it solve the problem? No. You told us this morning there are more McDonald's, and it's in the last five years. What we're trying to do is change that.

I want you to focus on one part, the limitation period. The reality is that you can't claim —

The Vice-Chair: Excuse me, Mr O'Toole. I'm sorry; your time has expired. Mr Duncan or a member of the official opposition, please.

Mr Duncan: Do you think taking away workers' rights and hurting the vulnerable is going to make society any better?

Mr Bolter: No.

Mr Duncan: Do you think that the response we've heard from this government is going to solve the problems that the working poor and, more importantly, those who aren't working have?

Mr Bolter: No. I think they're increasing the problems.

Mr Duncan: Do you think we ought to put the rhetoric about what's happened in the last five to 10 years aside and start working together to find solutions for people who have problems in this society?

Mr Bolter: Yes. I think we should stop blaming each other and just get on with it.

Mr Duncan: That's really a good point. You know, the chamber of commerce — the chambers in different communities have come and said, "Look, we do have to work together here," and a number of union representatives yesterday said that this government's poisoning collective bargaining in this province and poisoning those relationships in the labour markets which we need to be competitive and efficient. Do you think this type of

change is going to help make labour relations and the investment climate better in Ontario or do you think it's going to harm the investment climate?

Mr Bolter: I think it's got a potential of creating diversity between unions and management because the collective bargaining process, if it's used for standards, is going to basically open the door to a lot more strikes and more disagreement. You need a clear minimum standard from which you can work.

The Vice-Chair: Thank you, Mr Bolter, for coming forward this morning.

ALL CANADA COLLECT

The Vice-Chair: I would ask that the representative from All Canada Collect come forward, please. Good morning. For the sake of Hansard, I would ask you to introduce yourself.

Mr Gerry Coffin: Thank you very much. My name is Gerry Coffin and my presentation is basically very focused because it is really dealing with one issue, and that is the issue with respect to accounts receivable being turned over to private collection agencies.

I'm here to talk about a specific part of the proposed amendments as they relate to my industry, which is that of the private collection of accounts, and how it will assist the government. I believe that using private collection agencies will solve some of the problems the government is faced with today. You can turn time and effort into more productive and efficient use of existing manpower. Time is money. We're not suggesting the employees are inefficient; we simply say that when it comes to collecting past due accounts we're more efficient due to the fact that we deal with this on a daily basis.

While I'm not a designated spokesman for our industry, I've been an active participant as a collection agency owner for over 25 years and feel that I can speak with a certain amount of firsthand knowledge.

Our industry is one that's very closely regulated by the provincial government. All agencies are bonded, licensed and adhere to strict guidelines, regardless of the size of the agency or the location across the province. Forgive me if I refer to my own company, which is the Associated Credit Bureaus of Ontario. It is simply because I'm more familiar with the policies and the procedures of this group and I play a key part in the decisions and the quality of the service that we as a group of approximately 25 privately owned agencies provide to local businesses in every part of the province.

Collecting accounts is all we do. Generally speaking, there's nothing more inefficient than someone doing something that they're not trained to do or, worse still, having someone do something that they really don't feel comfortable doing. Collecting accounts — if you don't feel comfortable doing this sort of thing, it really is not very efficient. We surround ourselves with people who are licensed and trained to deal with debtors. They're trained in the techniques of negotiating and finalizing matters as quickly as possible. They're trained to ask for and receive payment in full of all accounts.

Just allow me to list a few reasons why we are successful in our collection efforts.

First of all, there is the psychological effect of the third party being involved; second is the consistent and regular follow-up to ensure continuity; third, knowledge of court rules and procedures as they pertain to collection matters; fourth, ability to negotiate settlements; and fifth, technology to locate assets and realize on same to satisfy any judgements.

Please allow me to address the proposed provisions, specifically subsection 73.0.2(2), which states:

"The director may authorize the collector to collect a reasonable fee or reasonable disbursements or both from each person from whom the collector seeks to collect...the director may impose conditions on the authorization and may determine what constitutes a reasonable fee and reasonable disbursements."

The simple answer to my concern appears to be dealt with in subsection (4) of the same section, which states:

"Clauses 22(a) and (c) of the Collection Agencies Act do not apply with respect to fees authorized under subsection (2)."

My concern is simply this: Section 22 of the Collection Agencies Act states that, "No collection agency or collector shall,

"(a) collect or attempt to collect for a person for whom it acts any money in addition to the amount owing by the debtor;

"(c) receive or make an agreement for the additional payment of any money by a debtor of a creditor for whom the collection agency acts, either on its own account or for the creditor and whether as a charge, cost, expense or otherwise...."

I'd like to share my understanding of the spirit of section 73.0.2 that's before this matter today. In most cases, as we understand it, a portion of the amount outstanding will be trust moneys owed to an employee. The normal practice for a collection agency is to take an account, collect the account, keep an agreed percentage and return the net amount to the client. In this case the client will be the Ministry of Labour, which is in fact assigning a trust receivable. Naturally they would want him or her to receive the full amount.

My concern essentially is this: The two acts are in a possible conflict.

I have made legal consultation and am advised that if this section is passed in its present form, fees may be added. However, he quickly goes on to state that at any time there's any ambiguity in law between acts, the act with restrictions or imperative rights on any individual will prevail.

As a licensed collection agency, we must be aware of detrimental consequences that could arise out of obvious violations. I would therefore request that section 73.0.2 be fine-tuned to simply add, "In all circumstances, the reasonable fee and disbursements, or both, collected from each person from whom the collector seeks to collect shall be deemed to be moneys owing by the debtor and shall not be considered moneys in addition to the amount owing by the debtor."

1050

It is obvious that the intent of the section is to expand the powers of the Collection Agencies Act and to address the problems contained in the act because they have made

reference to it in subsection 73.0.2(4). The goal should therefore be to redefine the wording of the act to uncover any difficulties that have to date gone unnoticed.

I would respectfully recommend to this committee that they make the drafting amendments so as to ensure there are no uncertainties in the future. Thank you very much.

The Vice-Chair: I thank you very much. We have just over four minutes per caucus and we'll start this time with the government side and Mr Tascona.

Mr Tascona: Thank you for your presentation. Can you tell me how much training and experience you have in collecting funds?

Mr Coffin: Me personally?

Mr Tascona: Yes.

Mr Coffin: Approximately 35 years.

Mr Tascona: What kind of training did you receive to do that?

Mr Coffin: I worked with two different finance companies for approximately 15 years. We're licensed; we are required to write an exam to hold a collection agency licence. There's no formal training per se. Most of it is on-the-job training.

Mr Tascona: Do you think that experience helps you do a better job?

Mr Coffin: Oh, definitely it does.

Mr Tascona: Why is that?

Mr Coffin: First of all, we're focused. I guess I use the analogy — quite frequently people will send their salespeople around to pick up their accounts receivable or to collect on their accounts receivable and there always appears to be a conflict. A person is going in and trying to sell a widget but at the same time is asking to pick up the accounts receivable. Collecting accounts is all we do, and I think that that's the main focus.

Mr Tascona: I find that very interesting because I was with the employment standards officers branch, actually in 1985, and at that time all we were responsible for, and up until 1993, I believe, the officers were only responsible for enforcing the act. But in 1993 the previous government disbanded the collections branch and discharged 10 people from their jobs and turned it over to the employment standards officer.

Mr Coffin: That's my understanding. My understanding is now that the employment standards officers do the actual audit, determine the amount of the claim, and then turn right around and have to come back and try to collect it from the company. Again, it's a matter of which is the most important job that gets the most attention. It's my understanding that the officers are relatively busy doing the audits and going out and handling them case by case, that the collection of accounts sort of becomes a secondary issue, and that they're not really being looked after on a regular basis.

Mr Tascona: Would you believe you need training in collections to be able to do it effectively?

Mr Coffin: Yes, because it becomes a matter of knowing the procedures, knowing the court procedures. It's my understanding that if there is an order made against the company, that order can be converted to an automatic judgement against the shareholders and the directors of the company. It's my understanding that that has not been issued, or has never been issued, that there

have been no attempts made to collect from the directors of the company.

Again, the collections are only effective if you understand the procedures of the courts and you can locate assets to attempt to collect this matters.

Mr Shea: That's an interesting response. Your view then is that the current method by which government staff are attempting to collect is not particularly efficient.

Mr Coffin: No, it's not.

Mr Shea: That where there's an attempt and a desire on the part of the government to ensure that a dollar owed is a dollar that should be collected completely and returned to the employee, has not been an objective that's been achieved so far.

Mr Coffin: That's my understanding.

Mr Shea: You believe that the private sector could do that more effectively than government.

Mr Coffin: Yes, I do.

Mr Shea: You have to bear with me for a moment because, on the one hand I have the evidence given that we have government employees who have knowledge of the act; on the other hand, I have the argument that the private sector has training and skill; and in the middle I've got companies that by and large don't want to pay anybody and either go bankrupt or don't want to pay anybody and will stonewall. What would lead me to believe that you could be a better job collecting and dealing with those kinds of companies than government employees?

Mr Coffin: Again, it's part of our tactic, if you want to call it that, for collecting. We're perhaps a little tenacious. We continue on against an individual case.

Mr Shea: You would go after the directors and you would apply other systems than currently are being applied right now.

Mr Coffin: Oh, by all means. Again, it's my understanding that a letter goes out and possibly a phone call goes out to the defaulting company, with no follow-up beyond that point. So, again, it becomes a situation of the squeaky wheel getting the grease. If you don't ask someone and don't chase after people, they are not going to pay. So therefore, yes, we would locate the assets of the directors and the owners of these companies and attempt to collect from them.

Mr Duncan: The official opposition sympathizes with what the government is trying to do; that is, find a better way to collect moneys owing. The two concerns that have been raised in the hearings to date are: the notion that many of the people that you try to collect for go out of business or close down and it becomes legally very difficult; the other concern that's been expressed is the notion that a collection agency could negotiate less than 100% of the wages owing. I wonder how you would address that particular concern. Say you won a tender to do collection, how would you address it? At what point would you suggest to an employee or a group of employees that it's better to settle for 50 cents on the dollar versus 100%? Just give a sense of how you would respond to that.

Mr Coffin: It's happening on a daily basis. Our procedure within my office is to simply take an account in, and once we have the account listed, we are allowed

to investigate both that company and that individual. It becomes legal, then, to investigate him and find out what assets he has. Upon completion of the investigation, we obviously are going to ask for the full amount at the outset. But in many cases it does become more prudent to collect 60% or 75% of the total amount now than to wait down the road and take it over a period of time. But it's not a decision that's lightly made, to take 60 cents on the dollar or 80 cents on the dollar, whatever it is; it's on an individual case basis.

Mr Duncan: Just to pursue that line of thinking a little bit, at what point would you decide to recommend, say, 60 cents on the dollar versus going after the directors of a company, assuming it's an incorporated organization?

Mr Coffin: If there are assets from a director, we will not recommend taking a settlement on the company just to make it easy on the company. Again, we deal with this on a daily basis. The problem with most accounts receivable with companies is that they do not have personal guarantees, so you have no attachment other than the limited company. If that limited company already owes well in excess of its assets, there's no point.

Mr Duncan: Just another question too, if I can. My understanding is — and maybe others around the table, perhaps research, can confirm this — that a large percentage of those wages that do go uncollected would happen in a situation where you have an unincorporated business or a sole proprietorship. How would you be able to deal with that situation as distinct from, say, an employment standards officer, who today would be the one who has to try to enforce collection?

Mr Coffin: I can only go from what my understanding is, that the employment standards people are telling me that they just don't have the time or the wherewithal to be able to determine exactly what that person has. If the person says, "I don't owe any money," or, "I don't have any assets," the employment standards people basically have to say, "That's it," whereas we would put a full-time person on to investigate that.

Mr Duncan: This is perhaps a bit unfair, and I don't mean to be unfair to you. Could you predict on, say, a percentage basis how much more you could collect on average than the existing system? What could your industry, in terms of percentages, do to improve collections: 10% better, 15%, 20%, 30% better?

Mr Coffin: Again, I'm only going from information that I'm receiving. I believe, quite frankly, that the employment standards business — and I'm using it because there is the hammer of having the director — I believe that there could be easily a 25% to 30% increase in the collection.

Mr Christopherson: Thank you, Mr Coffin, for your presentation. Let me say at the outset that I certainly have no qualms or difficulties at all with the role that your corporation plays in our society, and I think that you're entitled to do that, and that has no bearing on the approach that I'm going to take. I just wanted to say that for the record.

Having said that, I would ask, first of all, you do consider yourself to be an expert in the field of collections?

Mr Coffin: Yes, I do.

Mr Christopherson: Would you consider most of your employees, if not all, to be experts in the field of collections?

Mr Coffin: At various stages of training, yes.

Mr Christopherson: Right. When they're fully trained, you'd consider them to be experts?

Mr Coffin: Yes.

Mr Christopherson: If you or any of them were suddenly hired by the provincial government and you were no longer a private sector worker or employee but suddenly a public sector employee, would you lose that expertise?

Mr Coffin: I perhaps wouldn't lose that expertise; I might lose some of my motivation, because we work on production.

Mr Christopherson: Are you suggesting that everyone who is in the public sector is not a professional?

Mr Coffin: No, I'm not suggesting that at all.

Mr Christopherson: Okay, because I would suggest to you that professionalism implies the fact that you don't need to be necessarily paid to do a job that's proper, that you are paid for. If there's good, proper motivation for that and moral reasons, then that should be enough; if it isn't, then that's a problem that an individual would have, not the fact that they're a public sector employee. Is that fair?

Mr Coffin: That's fair.

1100

Mr Christopherson: I'd like to move a little then and talk about an ideal situation, where you'd go to an employer, do what you do best, they throw their arms in the air and say, "Uncle," give 100% of the money owed to the employee, and then on top of that is the penalty the employer has to pay, because they have to pay your fees and cover off other costs, and the employee gets all of their money. Would you say that would be the ideal?

Mr Coffin: That's Utopia, yes.

Mr Christopherson: Right. Now, let's say we're into a situation where we're at an 80% settlement. You get the company to offer 80%. You go to the employee and say, "I think this is the best we're going to get," and you use the judgement that Mr Duncan brought out of you that you would use. I would suggest to you that if you did that, the employee is going to lose something, because once you get under 100%, when the employer offers to make a settlement with you, there's two pieces they have to pay: one is the amount that the employee gets, and then they have to pay the money on top of that to cover your fee, which you're rightfully entitled to, and the profit that's built into that.

Do you not think it's fair to say that some of that money could have gone to the employee if it didn't have to go to you, and if that were part of the service the Ministry of Labour provided then the employee would get maybe 85%, 86% or 90% of their money, you would be providing a professional service and the most vulnerable in our society wouldn't be getting the short end of the stick in this deal?

Mr Coffin: But 80% of something is better than 100% of nothing.

Mr Christopherson: I'm not arguing that point. I'm just saying that if you can get 80% and on top of that the

employer is going to pay you your rightful fee, with your rightful profit margin built in, if you didn't have that part of it, that would be money the employer would be giving back to the employee, and instead of an 80% deal it's an 85% deal. Is that fair?

Mr Coffin: That's fair.

Mr Christopherson: If that's fair, then you can understand why unions and people who represent the most vulnerable have a great deal of difficulty with moving to privatization of this service, because it's the employee who's going to lose.

Mr Coffin: Again, I can only go by what I am told, that the people who are actually handling it right now do not have the time to do an effective job.

Mr Christopherson: I wouldn't argue that point. If we really wanted to go after this, I'm just suggesting that the government's alternative of privatizing it is not necessarily the only or the best way to go.

Mr Coffin: I can't comment on that.

Mr Christopherson: You didn't write this law; the government did. By the way, I appreciate the forthrightness of your answers, and I'm sure that if ultimately this is the way it goes — they have a majority — that you'll do a professional job. But I would submit on behalf of the NDP that this is not the way to go for the most vulnerable employees in our society. This government is giving them short shrift, and that's wrong.

The Vice-Chair: Thank you, Mr Coffin, for making your thoughts known today at the hearing process.

OXFORD REGIONAL LABOUR COUNCIL

The Vice-Chair: I would ask the representatives from the Oxford Regional Labour Council to come forward, please. Good morning, gentlemen.

Mr Broderick Carey: I'm Broderick Carey, president of the Oxford Regional Labour Council. With me today is Wayne Colbran, the financial secretary for the Oxford Regional Labour Council.

In introducing the Bill 49 amendments on May 13, Minister of Labour Elizabeth Witmer claimed she was making housekeeping amendments to the Employment Standards Act. She described the bill as "facilitating administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures." The reality is that this is not minor housekeeping but major Hoover cleaning with suction force equal to a tornado. These changes will make it easier for an employer to cheat their employees and harder for workers to enforce their rights. It strips unionized workers of their historic floor of rights which they have had under the Ontario law for decades.

This submission is made on behalf of the Oxford Regional Labour Council, located in Oxford county. The Oxford Regional Labour Council has been servicing its affiliates and communities since 1955. At present, we have 27 affiliated unions that administer over 50 collective agreements and represent over 8,000 workers and their families. These workers and the businesses they work in represent an average picture of Ontario's manufacturing and service industries. We are employed in everything from mining of lime and gypsum to foundries,

auto parts and assembly, transportation, textiles and retail, and as municipal workers, health care deliverers and workers in the agricultural product sector.

The flexible standards section we'll skip over. I understand the government at this point has backed off temporarily from it, but I want to make it very clear we were against that suggestion on May 13, we're against that suggestion on August 22 and we will continue to be against that suggestion of flexible standards in the future. We will not give in to that and we clearly stand in opposition to that.

Turning to page 5, enforcement under a collective agreement: Currently, under the Employment Standards Act unionized employees have access to considerable investigative and enforcement powers of the Ministry of Labour. This inexpensive and relatively expeditious method of proceeding has been proven useful, particularly in situations of workplace closures and with issues such as severance and termination pay.

The Bill 49 changes eliminate recourse by unionized employees to this avenue and instead require all unionized employees to use the grievance procedure under the collective agreement to enforce their legal rights. The unions will bear the burden of investigation, enforcement and their accompanying costs. The director can make an exception and allow a complaint under the act where he thinks it is appropriate, but for all practical purposes the enforcement of public legislation has been privatized.

Should these amendments pass, the collective agreement will have the Employment Standards Act virtually deemed to be included in it. A union will be faced with the potential of claims against it by dissatisfied members. Although the existing duty of fair representation has not in the past been seen as requiring a trade union to represent employees in respect to employment standards, with this amendment change a union can be faced with complaints by members concerning fair representation. This could well mean that a failure of enforcement will be seen by the labour relations board as constituting a breach of the duty of fair representation. Thus, unions will face both additional obligations and liability costs.

Arbitrators will now have jurisdiction and make rulings that were formerly in the purview of an employment standards officer, a referee or an adjudicator. They will not be limited by the maximum or minimum amounts of the act. However, arbitrators lack the investigative capacity of the ESOs and may not be able to match the consistency of result the act has had under public enforcement. Most important, employers could argue that as boards of arbitration do not have the critical powers to investigate whether particular activities or schemes were intended to defeat the intent and the purpose of the act and its regulations, such cannot be determined. In such circumstances, unionized employees could well be left with no recourse whatsoever. This is particularly evident in cases of related-employer or successorship provisions of the act. It is difficult to see how such provisions can be applied when the successor or related employer may well not be party to the arbitration proceeding.

1110

Enforcement for non-unionized employees: With these amendments, the Ministry of Labour is proposing to end

any enforcement in situations where it considers violations may be resolved by other means; namely, the courts. In other words, the amendments would download responsibility for the enforcement of minimum standards for non-unionized workers. Employees would be forced to choose between making a complaint to the employment standards branch or filing a civil suit in the courts. Responsibility for enforcement is also downloaded on to non-unionized employees by limiting the amount recoverable through employment standards to under \$10,000. Currently, there is no limit on what is recoverable. What an employer owes an employee is generally what he has to pay. An employee who files a claim with the Ministry of Labour for severance or termination pay is precluded from beginning a civil action concerning wrongful dismissal or claiming pay in lieu of notice which exceeds the statutory minimum.

The effect of these amendments is that those employees who have chosen the more expeditious and cost-effective path of claiming through the ministry will have to forgo any attempt to obtain additional compensation through the courts. Legal proceedings are notoriously lengthy and prohibitively expensive for many, even though they may be entitled in common law to more than the statutory minimums under the Employment Standards Act.

An employee who seeks to obtain a remedy in excess of \$10,000 and who can afford to wait the several years a civil case will take, and at the same time pay a lawyer, will have to forgo the relatively more efficient statutory machinery in respect of even those amounts clearly within the purview of the employment standards officer.

Employees who file a complaint under the act will have only two weeks to decide whether to continue under the act or withdraw their complaint and pursue the civil remedy. Those unaware of their legal rights may well be excluded from commencing a civil action unless they obtain the necessary legal advice within the short, two-week period.

Just as there are the provisions barring civil remedies in section 64.3, there are mirror provisions in section 64.4 precluding any employee who starts a civil action for wrongful dismissal from claiming severance or termination payments under the act. Other provisions are also prohibited under the act once a civil action has started, such as an employer not paying wages owed and failure to comply with successor rights in the contract service sector. Employees who initiate claims but decide they no longer wish to pursue their civil suit don't appear to have even the two-week time limit to change their mind. Rather, they appear to have no right at all to reinstitute a complaint under the act.

Maximum claims: The amendments introduce, as noted above, a new statutory maximum amount that an employee may recover by filing a complaint under the act. This maximum of \$10,000 would appear to apply to amounts owing of back wages and other moneys such as vacation pay, severance or termination pay. There are only a few exceptions, such as for orders awarding wages in respect to violations of the pregnancy and parental leave provisions and unlawful reprisals under the act.

The problem with implementing such a cap is that workers are often owed more than \$10,000, even in the

most poorly paid sectors of the workforce, such as food service, garment workers, domestics and others. Indeed, workers who have been deprived of their wages for lengthy periods of time are the very employees who will not have the means to hire a lawyer and wait the several years it would take before their case is settled. In effect, therefore, this provision will encourage the worst employers to violate the most basic standards, while at the same time compounding problems for those workers with meagre resources.

This \$10,000 limit would have penalized an Oxford county worker of some \$20,000 more and let the bad boss off the hook. He was a unionized employee who discovered while on layoff that his employer was using another plant with less senior employees doing the work. While he was on layoff, this same employer was bringing in the spouse and children of a supervisor to work in the plant. Even after going through proper procedures and through the employment standards branch and winning his case, this employer still refuses to pay up. This is a unionized environment. Could you imagine what it would be like for the unorganized to try and get it resolved?

Bill 49 also gives the minister the right to set minimum amounts for claims through regulation. Workers who make a claim below the minimum, which is as yet unknown, will be denied the right to file a complaint or have an investigation. Dependent upon the amount of this minimum, it could well have the effect of an employer keeping his violations under the minimum in any six-month period and thereby avoiding any legal penalty.

Use of private collectors: The proposed amendments intend to privatize the collection agency function of the Ministry of Labour's employment practices branch. This is an important change, providing one of the first looks at the government's actual privatization of a task which has traditionally been public. Private operators will, should these proposals be implemented, have the power to collect amounts owing under the act.

A fundamental problem with regard to the act has for some time now been the failure to enforce standards. This is no less true with regard to collections. The most frequent reason for the ministry's failure to collect wages assessed against an employer has been the employer's refusal to pay. The answer to this problem, according to the proposed amendments, is not to start enforcing the act but rather to absolve the government of the responsibility to enforce the act by farming out the problem to a collection agency.

In addition, the employment standards director can authorize the private collector to charge a fee from persons who owe money. Should the amount of money collected be less than the amount owing to the employee or employees, the regulations will enable the apportioning of the amount to the collector, the employee or employees and the government. Where the settlement is under 75% of the amount owing, the collector is required to obtain the approval of the director. But this still allows the collector incredible leeway, if not outright abuse, with someone else's money. The danger here is that even persons whose earnings put them below the poverty line and who are owed money under the act could well be required to pay fees to the collector. A minimum wage

worker at \$6.85 per hour, for example, could not only receive less money than what is owed but also have to pay to have it collected. Surely this raises ethical questions for the drafters. We would suggest that while such an approach may be appropriate in commercial transactions, it is neither morally justified nor appropriate in the circumstances. We want the system of public enforcement to be maintained and improved.

This provision will likely lead to employees receiving considerably smaller settlements. As well, they open the door to unconscionable abuse. The Oxford Regional Labour Council is gravely concerned that employees, particularly the most vulnerable, will be pressured to agree to settlements of less than the full amount owing as collectors argue, if only for the reasons of expediency, that less is better than nothing. Having at the same time to pay a collector amounts to nothing less than legalized theft. At the same time, unscrupulous employers will de facto now find their assessments for violations lowered and thus be encouraged to continue their violations of minimum standards.

Limitation periods: The proposed amendments in Bill 49 significantly change a number of time periods in the act. The major change is that employees will be entitled to back pay for a period of only six months from the date the complaint was filed instead of the existing two-year period. This restriction on time will penalize vulnerable workers who often find it necessary to file a complaint only after they have severed their employment relationship either by quitting or by changing employers. This is a substantive restriction, particularly for workers who have been denied their statutory rights for a longer period of time and cannot afford a civil suit. Only in certain circumstances, such as where the breach is a continued one or where there are violations in the case of several employees, is the limitation period extended.

Workers who fail to file within the this new time limit will have to take their employer to court in order to seek redress. The burden of cost will also have to be borne by the employee in such circumstances, as the Ontario legal aid plan has been scaled back and no longer covers most employment-related cases.

In contrast, the ministry still has two years from the day the complaint was filed in order to conduct their investigation and a further two years to get the employer to pay moneys owing. In other words, an employee having made a complaint under the act could wait up to four years before receiving their money, and then only the part of it that the collector gets, minus the user fee. That the government can rationalize such amendments as "facilitating administration" and "streamlining procedures" is almost beyond comprehension.

Minor amendments: There are several positive amendments in Bill 49. Two are noted below. The first concerns vacation entitlements and the second concerns seniority and service during pregnancy and parental leave.

Entitlement to vacation pay is one of the few amendments in Bill 49 that the Oxford Regional Labour Council can support. With the inclusion of this amendment, the act will clearly provide that the vacation entitlement of two weeks per year will accrue whether or not the employee actively works all of this period or was absent due to illness or leave.

1120

A distinction remains between entitlement to time off and entitlement to vacation pay. Vacation pay continues to be based on 4% earnings over the preceding 12 months. Thus, where a leave has resulted in decreased earnings, it may still be reflected in reduced statutory entitlement to vacation pay.

The amendments to seniority and service during pregnancy and parental leave ensure that all employees are credited with benefits and seniority while on such leave. With the passage of this amendment, the length of the employee's time on leave will be included in calculating length of employment, length of service or seniority, for purposes of determining rights under a collective agreement or contract of employment.

The passage of these amendments into legislation would take precedence over contractual language whether or not the contract refers to active employment.

Conclusion: Bill 49, in the government's words, is An Act to improve the Employment Standards Act. Nothing can be further from the truth. Oxford Regional Labour Council believes in basic societal standards in terms of hours of work, overtime pay, vacation pay, severance and public holidays. Bill 49 eliminates the floor for minimum standards. The floor has been eliminated under one foot of the worker, with the other foot on a banana peel.

As for the non-unionized workers, the most vulnerable in the workforce, Bill 49 can be compared to hanging from a greased rope and sliding to the bottom. This bill is about undermining their already precarious existence and as such is totally unacceptable.

As noted in our introduction, these amendments come on the eve of a comprehensive review of the act. The proper procedure would have been to include such changes as part of such a review and not try to pass them off as housekeeping changes. Beyond this, the core of the problem is the nature of the amendments themselves. As our comments already make clear, standards shouldn't be eroded, standards should not be made negotiable, rights shouldn't be made more difficult to obtain and enforcement shouldn't be contracted out and privatized.

The Harris agenda is to shrink the size of government and divest itself of public service. Once again, this government is putting the burden on the poor, most vulnerable and workers to achieve their \$10 billion slashed from the budget to pay their wealthy friends a tax break.

Mr Duncan: Thank you for your presentation. It's a very succinct analysis. One area where we have some sympathy with what the government is attempting to do is to streamline the efficiency of operation of the ministry.

My question is this: On page 6 of your brief, in terms of enforcement of non-unionized employees, you spoke about the opportunity to elect to go from civil suit back to employment standards or vice versa. Recognizing that clearly you support the way things have been, would amendments to the bill that would give effect to some sort of second or third opportunity for somebody to elect down the road make those provisions more palatable?

Mr Carey: I can't see any reason why we can't leave it as it is now, where they have the options, and clearly leave it that way.

Mr Christopherson: Thank you for your excellent presentation. On the bottom of page 8, in the very last sentence you say, when you're referring to the cap of \$10,000, "...this provision will encourage the worst employers to violate the most basic standards, while at the same time compounding the problems for those workers with meagre resources." The minister said on Monday when we launched these hearings, referring to the \$10,000, that those claims often "involve individuals in executive positions." We also heard from the union that represents the employment standards officers. They said in their presentation: "The ministry's reasoning, as noted in the expenditure reduction strategy report 1996-98, is to lower the caseload as 'higher-paid' employees would use civil action to collect. The assumption must be, when an employee files a claim in excess of \$10,000, they are higher-paid employees. This is not so."

Why do you and the union that represents the workers that actually deal with these cases believe the minister is, to be gentle, "inaccurate" when she says that these are all people in executive positions? What's the reality as you and your colleagues know it?

Mr Wayne Colbran: The reality you can see in that clause that you're talking about is the example that we're giving there. I've been personally involved with this one. This person is owed over \$35,000. He's been fighting this thing over a year and a half. The Ontario Labour Relations Board has ruled in his favour and the employer just refuses to pay. This person now is on welfare, and there's no way that somebody on welfare can afford to go through the legal system of the court. Even if he could, it will be another two or three years while this employer just hires himself a lawyer and still refuses to pay. This isn't just an off-the-wall example. This happens all the time.

Mr Baird: Thank you very much for your presentation. I appreciate the time you took to travel from Oxford county to present to us today.

There's just one thing I'd clarify in Mr Christopherson's remarks: He was correct the first time when he said the minister said "often," and then he later said "all." She certainly didn't mean "all"; she said "often," as Mr Christopherson first quoted.

When the employment standards officers came before us I made this comment to them. One of the groups that recommended that we go back to a cap — there used to be a cap in years past — was the employment standards officers themselves, who sat on a ministry committee that looked into this issue. It's funny that their union, representing them, came and said that no, they didn't like it, yet the employment standards officers themselves were one group, 50% of the members of a committee, who made the suggestion to the government.

Mr Christopherson: They couldn't respond because they ran out of time. Come on. Be fair.

The Chair: Mr Christopherson, you're out of order.

Mr Baird: That's a fact. The truth remains that they didn't come to speak to me afterwards, and that's what's in the ministry. That's the advice we got.

Mr Christopherson: If I'm allowed on the record, I'll give you that response. How's that?

Mr Baird: You can certainly table it with the committee. That was just a comment, Mr Chair.

The Chair: Thank you both for taking the time to come before us to make a presentation this morning. We certainly appreciate it.

LONDON HOTEL AND MOTEL ASSOCIATION

The Chair: The next group up is the city of London Hotel and Motel Association. Good morning. We have 20 minutes for you to use as you see fit, divided between presentation time or questions and answers.

Mr Chris Vachon: I'd like to start by saying good morning to everyone. My name is Chris Vachon. As mentioned, I represent the London hotel association and I am the general manager of Station Park Inn here in the city of London. I want to thank you and your committee first for allowing us the opportunity to be here today.

Employment standards reform is important, and therefore we support the government's initiative to repair it. Bill 49 is the first stage of this process, and we look forward to the extensive consultation process that will precede the introduction of the second stage of this reform package.

Bill 49, in our estimation and supported by our advisers, does not alter minimum employment standards in Ontario. What the legislation does is make technical changes to the act. These changes are aimed at improving administration and enforcement of employment standards as well as reducing ambiguity and simplifying language. We also see the bill signalling a significant reduction in the government's role in administering and enforcing the act.

The analysis is before you.

Act enforcement through collective agreement. The bill specifies that obligations under the act will be enforceable through collective agreements as if the act were part of a collective agreement. Employees covered by a collective agreement will not be permitted to file complaints under the act without the permission of the director. In essence, the grievance and arbitration procedure will reduce enforcement through the administrative machinery of the act. Powers of arbitration with respect to claims under the act will be expanded to include the powers of employment standards officers, adjudicators or referees under the act.

Parallel proceedings in court and under the act prohibited: The bill prohibits an employee from commencing a wrongful dismissal action in court if he or she files a complaint claiming termination or severance pay under the act. Similarly, where there is an employee complaint under the act for wages owing, breach of building services, successor provisions or the benefit provision of the act, a civil action seeking a remedy for the same matter is prohibited. These restrictions apply even if the amount owing exceeds the maximum for which an order can be made under the act. Civil actions are permitted if the employee withdraws the employment standards complaint within two weeks after filing it.

1130

In parallel to the foregoing restrictions, an employee cannot initiate a complaint under the act for the specified matters if a civil action covering the same matter has been commenced. Effectively, the bill will require

employees to choose whether to sue in court or to seek enforcement through the act.

Increasing flexibility for provision of greater benefits in contracts: The bill will make it easier for employers to establish that they have provided greater rights and benefits than are required by the act and thus obtain certain provisions of the act. When a group of collective agreement provisions — severance pay, hours worked, overtime, public holidays and vacation — are considered together, rather than separate as in past years, the collective agreement will prevail if it provides superior rights. In addition, statutory regulatory provisions, as well as provisions in oral, expressed or implied contracts, will prevail over employment standards if they confer a greater right than is provided by the employment standard.

Under the section on service during pregnancy and parental leave, the bill requires the length of employee pregnancy or parental leave to be included not only in determining seniority, as required by the current act, but also in determining the length of service for all rights except for the completion of the probationary period. Thus, all rights in the employment contracts that are service-driven will continue to accrue during the leave. All employers should review their contracts of employment to determine the impact this change will have.

Vacations: The present vacation of at least two weeks upon completion of 12 months of employment is amended to apply whether or not the employment was active employment. The pay during the vacation must not be less than 4% of the wages, excluding vacation, earned by the employee in the 12 months for which the vacation is given. This clarifies and simplifies existing provisions in the act.

Maximum amount of orders: Employment standards officers will not be permitted to make an order for an amount greater than \$10,000 in respect of one employee, with the exception of orders relating to breach of the pregnancy or parental leave, lie detector, retail business holidays and garnishment provisions, and termination and severance pay in connection with breaches of such provisions. Arbitrators will not be subject to these restrictions. The bill provides for regulations prohibiting officers from issuing orders below the level specified in the regulation.

Collections: The bill sets out mechanisms for directors to use private collection agencies to collect amounts owing under the act. This will provide the ability to contract out a function that is now performed within the ministry. Collectors will be authorized to agree to compromises or settlements of claims if the person to whom the money is owed agrees, provided it is not less than 75%, or such other percentages as may be prescribed, of the money to which the person is entitled, unless the director approves otherwise.

Compromise of right under the act: Compromises and settlements respecting moneys owing under the act will be binding once the money stipulated in the compromise or settlement is paid, unless the arrangement is entered into as a result of fraud or coercion. In the current act, there was very little ability to contract out of the act's requirements. Employment standards officers will be

given additional authority to settle complaints without making a prior finding of what wages are owing.

Limitation periods in a prosecution or proceeding under the act: No person will be entitled to recover money that becomes due to the person more than six months before the facts upon which the prosecution or proceeding is based first come to the knowledge of the director, subject to certain exceptions. In the current act, the limitation provided is two years.

Review of orders: An employment standards officer will be deemed to have refused to issue an order if a proceeding is not commenced within two years after the facts upon which the refusal is based first come to the knowledge of the director. Employees may request the review of an order or refusal to issue an order, in writing, within 45 days. The director has the discretion to extend this time limit in certain circumstances. Certain orders may be reviewed by way of a hearing. In the case of the employer, application for a hearing is dependent on paying the wages and administration costs required by the order.

Administrative changes: Complaints under the act will be able to be filed in either written or electronic form. Employment standards officers will be able to obtain copies of documents kept in electronic form. Certain changes concerning the service of documents under the act are also made.

We, the members of the London Hotel and Motel Association, zone 5 of the Ontario Hotel and Motel Association, support Bill 49, as it signals progressive change in employment standards in Ontario. It is not reducing the standards. It should be further emphasized that we are not seeking a reduction in benefits. We are good employers. We want to ensure our employees are treated fairly and receive that which is their due.

Respectfully submitted.

Mr Christopherson: Thank you, Mr Vachon, for your presentation. I'm asking a question I don't know the answer to, which is dangerous for politicians, but I don't. What percentage of your industry would you say is unionized?

Mr Vachon: We just joined forces with the Hotel Association of Metropolitan Toronto, bringing us 40 additional major — international in some cases — hotels. As it stands right now, being myself the director of membership for the Ontario association, there is approximately 12% right now. The concentration is in Toronto.

Mr Christopherson: So 12% are unionized and the rest are non-union.

Mr Vachon: Yes.

Mr Christopherson: You would agree that if you don't have a collective agreement, the only real protection that you have, the only real bill of rights, is the Employment Standards Act? It's that or nothing.

Mr Vachon: Yes.

Mr Christopherson: I would just then like to pursue with you the notion you put forward that this is not reducing standards to those people who have the Employment Standards Act as their only piece of protection when, as I've raised earlier, there's a cap on how much money people can claim for and the only way they can get beyond that is to pay a lawyer, which means they're

out money they wouldn't otherwise be with this bill. There are a lot of other examples; I don't have a lot of time. But I would like to hear a little further how you can square your statement that it's not reducing standards when I can point to you time after time where employees will be net losers as a result of Bill 49. They're out money, and I think in your business that means you lose something.

Mr Vachon: Right. With respect to the question directly, I'm not at liberty to extend the comments on behalf of the association or on behalf of the London Hotel and Motel Association other than what we put forth on a collective agreement and as advised with our lobbyists with Queen's Park. This is our document that we're reading from. I'm sorry. I can't speak of any personal view because of the properties that I've been running, the four in the last 10 years have not been unionized, so I can't directly answer your question.

1140

Mr O'Toole: Thank you very much for your presentation. You should never feel nervous in front of us; we're the ones who are supposed to feel nervous.

But anyway, limitation periods: I just want to give you some background on that for the sake of the record. The evidence is that 85% to 90% of the employment standards claims currently are filed within the six months. Are you aware of that? That's the current status: 85% to 90% are filed within six months. Furthermore, Alberta, Manitoba, Newfoundland and Nova Scotia already have a six-month provision for the limitation period. So we're really trying to harmonize some of the things that currently exist in the Canadian marketplace.

Also on the limitation period, it's very important to pass on to your membership — much of what you said is very reflective of what we said, but to expand, we need to say that in the case of repeated claims, like failure in overtime payment, it's possible the limitation period can be expanded up to one year. This message doesn't seem to be getting out, and I think it's important for you to pass that on to your membership.

I just ask one last question. Will your organization be participating in part two of the full discussion on the employment standards changes?

Mr Vachon: Yes, and I can say that quite confidently because, again, our lobbyist with Queen's Park is actively pursuing and having the associations that were represented in different municipalities following through the process as well. So to answer your question, are we? We'd like to. Will we? Yes, if the opportunity presents itself.

Mr Duncan: Thank you for your presentation. The official opposition is not unsympathetic to the government's desire to try and improve the efficiency of the act. However, I guess we do differ with you with respect to the reduction of minimum standards. We believe there are clear reductions in minimum standards. Our view is that you can achieve both ends, that number one, you can improve the efficient administration of the act, and number two, do that without impacting directly on minimum standards.

My question to you is this, and I've asked a number of other business organizations this question. The types of

businesses in my experience that will actually be impacted by these provisions are a very small percentage. I would assume the vast majority of your members are good employers who probably have never had claims for back wages, or if they have, it's been a very rare circumstance. Given that, why would organizations such as yours be as concerned as you are about some of these issues?

Mr Vachon: I can't speak on behalf of the association. Some of these issues that are before me — not all of them can I speak directly on, but I know these have been real issues that have been brought up within the city of London and are concerns with the 38 properties we represent as motels and hotels in the city.

The Chair: Thank you for coming before us here this morning and making your presentation. We certainly appreciate it.

CANADIAN UNION OF PUBLIC EMPLOYEES, LONDON AND DISTRICT COUNCIL

The Chair: Which takes us to our last presentation of the morning, the Canadian Union of Public Employees, London council. Good morning again. And again you have your full 20 minutes, even if it takes us over the noon deadline.

Ms Harriet Miller: Good morning. My name is Harriet Miller and I'm here representing the London and district council of the Canadian Union of Public Employees.

I shall say up front the reason why a member of the executive is not here is because they're all gainfully employed out there and cannot get time off for union business. That brings me back to part of the tenet of what the Ontario Federation of Labour and CUPE have talked about, because in downloading, as I see it, in your streamlining process some of the responsibilities to the unions, it's important to realize — and I'm going to guess that 99% of the union executive members are volunteers. They don't have the time and they certainly don't have the resources.

So the reason I am here: I am very interested in women's issues and I think that's primarily why I've been asked to come and speak on behalf of the executive of this council that I have been involved with in the past. So on behalf of hundreds and hundreds of volunteers with CUPE in the London area, I'm happy to be here today.

I do want to tell you, though, because I don't know whether it's been explained to this group, at least at this hearing, that there are 12 or 13 of these councils in Ontario and we are actively involved in this. We're involved in, heaven forbid, the days of protest, and we lobby and we communicate and we get together on issues and share concerns.

First of all, somebody over here, Mr O'Toole, mentioned Gord Wilson's brief. The CUPE brief I know — did Sid Ryan already present to you? He will be doing so. He will no doubt be going through the whole brief. Because we were not able to get together with the council to pick priority items, which has been suggested by CUPE, I've just taken a few thoughts and concerns out of the brief, although I've done a lot of reading on this

myself and have been very interested. But I would not take specific issues without getting direction from the council to do so.

My general comments:

It is the position of the London and district council of the Canadian Union of Public Employees that the employment standards legislation is among the most fundamental pieces of labour legislation for ordinary working people in this province. The purpose of this legislation has been to establish vital minimum standards designed to protect workers from the exploitation handed out by the province's worst employers.

We submit that any amendments to this legislation must enshrine a basic principle of continued improvement in the employment standards of workers so that they may be protected from the excesses of the labour market, and I'm going to make a general comment on that example at the end.

The Minister of Labour has portrayed the changes found in Bill 49, the employment improvement act, as housekeeping amendments that would facilitate administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures. On the contrary, the council is concerned that the amendments are in fact significant changes designed to frustrate the legitimate claims of workers under the act by undermining workers' most basic rights.

Claims under the act will limit the ability of workers to enforce their rights under the law. The method in which an employee may recover from an alleged violation of the act — do you call it an acronym when you say ESA? We'll call it "the act" — is significantly changed to limit the worker's ability to obtain full redress under the law. The substance of what may be claimed has been limited under Bill 49 so as to set a minimum and maximum amount that a claimant may obtain as a result of a violation of the act. Also, the duration of acceptable claims has been shortened in order to reduce the amounts that may be recovered against employers that have violated the law. Together, these changes will reduce the total amount workers may claim from their employers under the act.

Several underlying themes arise throughout the amendments. The Ministry of Labour is attempting to rid itself of the cost and responsibility of enforcing the act. All of the changes designed to channel complaints into the court or grievance arbitration systems seem to help the ministry reduce its budget.

The elimination of a universal floor of rights for unionized workers indicates an effort by the government to erode the general level of employment standards in Ontario. Allowing employers with a bargaining agent the opportunity of setting workplace employment standards will lead some employers to erode current standards, and of this we have no doubt. These changes will encourage unscrupulous employers to realize cost savings by abusing their employees' rights under the act. Given the increased difficulty of enforcement for non-unionized employees, some employers will increasingly disregard the substance of the law designed to protect these employees. This faulty enforcement regime will move unionized employees to insist on workplace concessions.

Employers may simply contract out their work to unprincipled employers that do not abide by the law.

How's my time?

The Chair: We have lots of time. We still have 11-and-a-half minutes left.

Ms Miller: All right. I wanted to give you an example of something that's happened that was brought to our council by way of information, which is with one of our employers. In looking to make savings and also make the employees feel good, they said that the top level in a particular bargaining unit really was management. Fine. Okay, that case can be made, as we realize in law. So they made them into the next level up in this particular establishment and then, lo and behold, what they did is they said, "Oh, by the way, we have to cut back in all levels of the operation," and all the people they'd just taken out of the top level of the union and put into the lower level of management, they let them all go. This is what actually happened in the city of London in one of our workplaces.

Most of our employers are fabulous. We hear wonderful, wonderful accolades. But I'm afraid, silly as it may sound, that that \$10,000 ceiling — some employers may just push things to the limit in whatever area of this law, get it over the \$10,000 and say: "Whoops, \$10,250. You'd better get yourself a lawyer." So I just don't agree at all with the limit on that.

1150

Also, we just had a report from a Jean Read, looking at the Pay Equity Act and changes they're making there. There are significant changes that are going to be suggested.

In Bill 40, which was scuttled by Bill 26 —

Mr Baird: Bill 7.

Ms Miller: Was it? What was 26? Oh, that was the restructuring or whatever.

There was a very important thing in that act that was taken out of Bill 40. This is just to demonstrate my fear with this government. There was a clause in Bill 40 that said that every collective agreement was deemed to have a particular clause, which was, "No employee shall be disciplined or discharged without just cause." That was scrapped. That is extremely significant. What I'm hearing here and seeing in this paperwork is that if we do not keep a mechanism for all citizens of Ontario to have a mechanism within the Ministry of Labour on employment standards, I can see that we may end up with more and more problems, people in litigation, horror stories.

On topic but off topic, there was a gentleman here from Kellogg today, and one very positive thing I remember from that — I didn't know what the upset was at Kellogg, but out of that period of time there came an employee protection program which was acute stress psychological help. It's ironic that with the stress, they talked about — people weren't gone, but in effect, they put in place, union and management, a marvellous way of dealing with acute stress, alcoholism and family problems. I don't know specifically if it came around that time, but it appears to me to have been at that point in time.

The government appears to be abdicating its responsibility of ensuring employment standards for all its

citizens. We strongly protest any reduction in standards in any laws that have made Ontario one of the model societies, to be the envy of other less fortunate and farsighted jurisdictions.

I think it's ironic, just to say in absolutely closing, that Mike Harris and Ralph Klein, yesterday, with their peers at the first ministers' conference, their idea on medicare was scuttled, because the rest of the country is saying, "Uh-uh, it's not going to be touched; it's universality there." In Ontario, I hope the Conservative Party and Mike Harris in particular look to whom they're supposed to be representing. I know they are of a higher position in status in many ways, but they have to represent the people of this province. And the unions are going to be very happy to be involved at the second phase, I'm sure.

The Chair: That leaves us two minutes per caucus for any comments or questions, and we'll commence with the government members.

Mr Baird: I just have a short comment. I know my colleague from Toronto would like to say a few words.

Just briefly, you mentioned that Sid Ryan spoke to us. I'd just indicate that Mr Ryan met privately with the minister last week about, among other things, the Employment Standards Act and the changes in Bill 49. So I can assure you that she does certainly take the time —

Ms Miller: I notice it said August 19, which was last Monday, so maybe that's —

Mr Baird: Yes. So she has met with him. We are hearing from a good number of CUPE groups and a good number of them were even on the government's list that we wanted to hear from.

Ms Miller: Wonderful.

Mr Baird: I grew up in a CUPE household myself.

Ms Miller: Oh, did you?

Mr Tascona: The one thing we've been finding out throughout the hearings is that the collection process isn't working. We collect about 25 cents on every dollar. We're scratching our heads for methods to ensure that the workers get paid for their work. One of the problems, we found out, is that in excess of 50% of the employers who won't pay is because of financial reasons, and they use the protection of the Bankruptcy Act to get away from their obligations. That's an area we can't control. It's under the federal government's mandate and they've done nothing.

One other area you were looking at is some way of talking about private collections, but there are other measures that can be considered where there have been collections. Do you have any experience with the Occupational Health and Safety Act?

Ms Miller: Yes, I do.

Mr Tascona: Have you ever been involved where an officer — are you familiar with the powers that they have with respect to shutting down a workplace?

Ms Miller: I certainly am.

Mr Tascona: Now, do you think that those types of powers in terms of a specific type of circumstance — the employment standards officer's powers are limited to enforcement etc, but in a circumstance, would you believe that having the power to shut down an operation

to ensure the collection of wages would be something that would be, on a balance, fair to the employer, fair to society, fair to the workers that are not being able to work, if that in fact was done? Because it's done under health and safety.

Ms Miller: Right.

Mr Tascona: They shut down the operation if they breach the act. What do you think?

Ms Miller: I think that would be a wonderful thing to have in the act, because I think it would make employers realize they have to be accountable and they shouldn't abdicate their responsibilities.

Mr Tascona: But where should it be used? It can't be used all the time. It has to be used in a certain circumstance. Where do you think it should be used?

Ms Miller: I wouldn't have the answer. I know that it has quite a bit to do with the whole bankruptcy law and —

Mr Tascona: Would it be a situation where there's one worker —

The Chair: Thank you, Mr Tascona; sorry.

Ms Miller: I think the government should be involved, should it happen. It shouldn't be an individual worker against the employer, in my personal opinion.

Mr Duncan: Thank you very much for your presentation. In your view, you had indicated by way of example and even said, I think, that most of the employers you deal with are good employers and that a lot of these things won't affect them. One of the arguments that's been made by other labour organizations is that this will in fact impede collective bargaining and the fast resolution of disputes at the bargaining table, particularly if, in the second stage of reform, the government goes ahead with the minimum floors. Would it be the view of CUPE as well that these types of changes to the Employment Standards Act would in fact impede collective bargaining and likely lead to a less stable labour market?

Ms Miller: Absolutely; very, very, very seriously.

The Chair: That takes us to — oops, we still have Mr Christopherson.

Mr Christopherson: I'll be very brief. You mention in your opening comments that you wanted to see and would be supportive of continued improvements to the Employment Standards Act. Yesterday in Kitchener, we had John Cunningham, who's the president of the United Steelworkers, Local 677, referring to this as the "bad boss" Bill 49, and he said, referring to the government, "You must be Hood Robin, who robs from the poor to legislate to the rich." With that in mind and your statement in mind, how do you feel about the name of this act being An Act to improve the Employment Standards Act, and who do you think it improves it for?

Ms Miller: If there's any improvement at all as it presently sits, I think it's an improvement for the employers. I think it's detrimental to the employees. I think the name makes no sense with it calling it improvement.

The Chair: Thank you, Ms Miller, for taking the time to come before us today. With that, that completes our morning session. The committee stands recessed till 1 o'clock back in this room.

The committee recessed from 1159 to 1309.

LONDON REGIONAL ADVOCATES GROUP

The Chair: Our first group up this afternoon is the London Regional Advocates Group. Good afternoon.

Ms Jayne McKenzie: Good afternoon. I am Jayne McKenzie from OPSEU Local 220, a member of London Regional Advocates Group. With me are Susan Green from WRIST, Workers Repetitive Injury Support Team, and Frank Stilson from LOSH, London Occupational Safety and Health. We are three out of 60 members of the London Regional Advocates Group.

Ms Susan Green: Good afternoon. First off, I would like to thank the New Democratic Party for their diligence in making sure that the vulnerable people of this province had the ability to challenge this piece of legislation for what it is, nothing more than a way for the employers to spit in the faces of their workers. "Open for business" means higher profits and fewer rights. The commonsense government has done nothing for the working people of this province other than reduce their rights with every piece of legislation they turn out. Special-interest groups, basically the voting population, have been ignored in favour of their business buddies, 10% of the population. The tax base that the special-interest groups represent is the majority of taxes paid. The larger corporations have eroded the amount of taxes they pay by continually applying pressure to reduce their taxes and create loopholes. The current commonsense government continues to ignore us by trying to convince us that Bill 49 is good for us, that it will help us.

The London Regional Advocates Group consists of representatives of many diversified groups: unions, injured workers' groups, legal aid groups, occupational health and safety groups, ethnic groups. Our requirement for membership is that there is no fee for service. We have no constitution or bylaws; just dedicated people.

These dedicated people see the vulnerable of our region every day in their jobs and in their volunteer roles. We see what happens when the rules and regulations that are already in place are laughed at by unscrupulous employers. They ignore the current Employment Standards Act. Bill 49 gives them no reason to change; in fact, it gives them more leeway to cheat their employees. After all, just because one employee launches a complaint doesn't mean the rest of the employees will be able to get justice, and just because one employee wins their complaint doesn't mean it sets a precedent with the rest of the employees either. These same employers that cheat on the employment standards are the same employers who defraud the WCB, are lax in health and safety and are generally just all-around bad bosses.

Bill 49 falls short of doing anything to protect the working people of Ontario from these bad bosses; in fact, it does the opposite. It protects these bad bosses by capping the amount the employees can retrieve. It narrows the window in which employees can get what is rightfully theirs. It slams doors on employees making one complaint for the good of all employees.

Yes, the bad bosses will continue to thrive in this commonsense Ontario while their employees will cower in fear of losing their jobs and wait unrealistic time frames to recover what was theirs to begin with. Generally speaking, these people cannot afford the cost of

litigation, nor can they afford to be without the money that is owed to them. A day's pay is \$54.80, and generally that is exactly what the bad boss is willing to pay — minimum wage only. That \$54.80 begins to put food on the table or a roof over their head. There is no tidy little nest egg for them to fall back on. There is no emergency cash to be had.

The bad boss has already demonstrated that he does not care about the Employment Standards Act by flagrantly ignoring it, so why not fire the bad employee who reported him too? They always have a justifiable reason to get rid of this employee who may have just cost them some of their profit, and with the job market the way it is the employer has no problem filling the vacant spot. Forward with production; on and onwards with profitable deceptions. After all, what have they got to lose?

I perceive the government as being not unlike parents with two children, the workers and the corporate structure. It seems as if the parents are neglecting, abandoning one of the children, the workers, while spoiling the already greedy child. The neglected ones will start to show signs of this abandonment as time progresses, and the effects of these pieces of all this bad legislation or neglectful parenting will come into play.

Ms McKenzie: The Employment Standards Act provides us with minimum wages and conditions of employment. It's our position at the London Regional Advocates Group that Bill 49 erodes the fundamental foundations of these rights of all workers in this province, at least those few currently covered.

One aspect is to reduce the amount of time a worker can file to six months. Mr Stilson will be addressing that. The other is the ministry's abdication of the responsibility of enforcement. The Ministry of Labour is not currently known for its proactive approach either in enforcing the law or in encouraging compliance. The historical response has been to deal with individual complaints on a case-by-case basis. The result has been slow-moving and considered relatively unresponsive.

Rather than grabbing the bull by the horns and dealing with the problems of investigation, compliance and enforcement, Bill 49 recommends abdicating that legal responsibility for enforcement and hiding the problems under a rug. I'd suggest that rug is one woven from regression and privatization. It might be housekeeping, but dirt pushed under the rug doesn't make for a clean house. It always returns and has to be dealt with again.

Since 1995, ministry by ministry, the provincial government has reiterated its position that it only makes the laws, it is not in the enforcement business. I'd ask the committee to consider a comparison between the Employment Standards Act and Highway 401. The laws of the province regulate the speed limit on the 401 to 100 kilometres. Enforcement comes from the police, and they use a variety of methods including, in the past, the controversial photo-radar, found to be highly effective. There is also controversy right now as to whether to increase that speed limit. It's well known and accepted that a vast number of drivers on the 401 reduce their speed to the legal limit when enforcement is there. It's also accepted that when enforcement is inadequate or completely absent, compliance with that maximum 100-

kilometre limit diminishes and the average speed easily goes from 100 kilometres to 110 or 120. Without compliance and enforcement on the lanes of the 401, it becomes dangerous at the best of times and at other times life-threatening.

The same can be said of the workplaces in Ontario. They can bear a striking resemblance to the 401. Some employers adhere to the speed limit and travel consistently and steadily in the right-hand lane. Other employers travel without regard or concern for the welfare of others. They speed recklessly through in the passing lane at dangerous rates. An example would be our past-year documented instances when trucking companies disregarded the basic fundamental rules of the road with faulty brakes or tires. These have resulted in lost lives. Had the government or the public called for less enforcement of the rules of the road? No. Cries from the public, and indeed from the government itself, have been for tighter and stricter enforcement of these regulations.

The workers of this province expect no less than the drivers of this province: minimum reasonable standards and standards which are applicable to all across the board; standards legislated, then enforced, by those responsible for the standards. The government has available to it recommendations that would increase and ensure better compliance. One recommendation would be content changes to make the Employment Standards Act more effective. Have all parts of the ESA apply to all workers in the provincial jurisdiction, as opposed to excluding various categories from minimum wage, another list for public holidays, another for hours of work. Apply the law to everyone and let everyone know it. There would be a lot fewer violations of the act.

There are other administrative changes that would make the ESA more effective and efficient. They would be better use of the resources of the ministry and ensure that complaints dealing with both workers and employers would be speedily resolved. They would be spot audits of employers' books with an investigation of all individual complaints, leading to full investigations if any additional violations are found; proactive education and investigation procedures; heavy penalties for employers who do not pay out orders within short or fixed times; mandatory posting of the act in all workplaces, as it is with the Workers' Compensation Act and Occupational Health and Safety Act; shorter time limits on ministry investigations; and education about the Employment Standards Act in all materials and forums for new companies incorporating in Ontario.

Should the provincial government choose to continue with what it is referring to as housekeeping changes, we have one more change that would be in keeping with that, and that would be the suggestion that the Minister of Labour change her title to that of Minister of Corporations.

1320

Mr Frank Stilson: I come here not to speak for myself but to speak for two workers who were killed in London less than four blocks from this room. They are Brad Olson, age 23, and Louis Dupont, age 27. My message goes out to the members of this committee, the Premier of Ontario, the employment standards policy-

makers, lawyers — all the people who had a hand in this situation in London. I think there is responsibility directed towards those people.

I talk in terms of hours of work. I spent four days at this inquest with the parents of these two people. His mother, on one of the four days, accounted the hours of work of Brad Olson, and I'll summarize those. He worked from January 1995 until May 15, the day of his death. The total number of days is 126; he worked 122 days. During the month of January, he started on January 9 and worked 21 days, 12 hours a day; he had one day off. In February, he had one day off. So in January and February he worked 44 days without a day off. In March he had one day off and in April he had one day off. In May, he had one day off.

During the proceedings of the inquest the company did not dispute that. The company did not dispute that it did not have a permit for excessive hours over eight hours in a day or 44 in a week. No orders, no charges were laid against this company, right from the top legal people who decide on these issues down to the inspectors who were not responding to anything. The other issue was a health and safety concern. There was no confined-space training. No charges were laid.

This case was brought up on CBC, and the person responsible for laying charges said they would not be laid. To this day, we still do not know why charges were not laid. The death of two people, not injury but deaths, and no charges laid. People are still scratching their heads, "Why did this happen?" when the company admitted it had no permit, it violated the Occupational Health and Safety Act and the Employment Standards Act.

This government wants to lessen those employment standards when under the existing ones people are being killed — not gipped out of money, not fired for no reason, but killed — because of the lack of enforcement from the employment standards branch right from the top down to the inspectors. Now, there are good inspectors and there are bad inspectors, but in this case the inspectors just gather the information; it's up to the policy people, the legal people to decide.

What message does this give to employers in this province? That they can kill two people and nothing, no consequence. Kill somebody on Highway 401 and there are consequences. It should be the same. I encourage this committee to ensure standards are enforced and that they are not lessened in any way, or more deaths in this city and in this province will happen.

Mr Hoy: Thank you very much for your presentation, all three sections of it. You seem to be referring to different aspects of this law and other laws. Your analogy with the 401 enforcement is one that all should take note of. However, I would mention that it seems, particularly in the rural areas, I'm hearing that policing is not what it was at one time either. Break-and-enter cases are not investigated. People are told to simply call their insurance company, which costs workers and others more money in terms of premiums and perhaps lack of coverage if they were to have more incidents than one, two or three. There seems to be a downloading of responsibilities by this government to other areas, other aspects of our society. But I appreciate the comments that you made in total.

Mr Christopherson: I also want to thank you for your presentation. I'd like to ask your thoughts as they relate to the most vulnerable in the workplace. I want to keep coming back to that often, because I think that's the crux of this as a recognition that the people who rely on this law the most are the ones that already have the least, the least power, the least access to the levers of power, in our society. The government continues to maintain that the changes they're making are not going to lessen the rights that the most vulnerable have.

In light of the fact that 90% of all the claims are made after people leave the employment of an employer they believe has violated their rights, and given the fact that they will not be allowed now to go back beyond six months, what do you think the circumstances are that employees are facing? What is the world that they're facing on the job that would support the claim that this law leaves those people vulnerable to, first of all, initial action by employers, but also retaliation, regardless of the fact there are laws there that say they shouldn't; the fact that people feel they're vulnerable and they can't afford to take on the boss and they have to make a choice between their rights and their job? Can you give me your experience in this area with vulnerable workers.

Mr Stilson: I think I hear every day that people have to put their jobs on the line. Either they don't enforce health and safety standards or employment standards; they say, "Well, I can't push that, because I'll lose my job." What this legislation or these proposals would do is give a message to employers that they can get away with more, more murder, more killing in the workplace if they were lessened, if they were left to the workplace parties. A lot of people that I see, and these two people that I just mentioned, did not belong to a union. So I think it's going to just lessen the rights and give a message to employers that they can get away with it under the old Employment Standards Act, get away with murder; they're going to get away with it even more and say: "Ah, great, we don't have to do anything now. We don't have to get a permit." That's the message that is given to employers today.

Mr O'Toole: Thank you for your presentation. In all sincerity, Frank, your comments with regard to the untimely and unfortunate deaths of Brad Olson and Louis Dupont, it's regrettable and it proves in very large measure that the standard enforced at that time — if I understand, the time was January to May 1995?

Mr Stilson: It was May 1995, the deaths.

Mr O'Toole: I would guess that the Employment Standards Act that was in place at that time, being administered by the then government under Mr Christopherson, was not working. They had every duty and responsibility, as we do, to make the proper amendments. Do you agree that there should be some changes to the current standards with respect to not lessening those standards?

Mr Stilson: Certainly I think there should be changes to the standards. But you could have the best standards in the world, but if you have policy people at the top saying on CBC TV that there are going to be no charges laid, then those people should be questioned. The law should definitely be changed, but those people should be ques-

tioned or removed from office. Clearly, at the inquest, two lives were taken, the company admitted that they had no permit, that they broke the law, and still nothing happened.

Mr O'Toole: On the 100-kilometres-per-hour comparison, I think there's an excellent analogy there, that people have a responsibility to obey the law. I think that's really all we're trying to do.

The Chair: Thank you, all three of you, for taking the time to come in and make your presentations before us here today.

1330

SUSAN SMITH

The Chair: Our next presenter is Ms Susan Smith. Would you come forward, please. I understand Ms Smith may be making some comments or all of her comments in French, and I remind the committee that's to be found on channel 2, canal 2.

Ms Susan Smith: Not all comments in French, but some of them.

The Chair: Good afternoon, and just a reminder that we have 20 minutes for you to divide as you see fit between a presentation time and question-and-answer period.

M^{me} Smith : Je remercie le greffier du comité propre pour cette opportunité de faire une présentation. Ceci est un autre exemple d'un nom de projet de loi qui ne répond à peu près pas du tout à ce qui se passe dans le projet de loi. Il n'y a qu'une seule amélioration dans ce projet de loi. Je vais passer très peu de temps là-dessus et je vais passer le reste du temps à critiquer ce qui manque là-dessus.

There is one minor positive amendment in this bill; only one. The amendments to seniority and service during pregnancy and parental leave ensure that all employees are credited with benefits and seniority while on such leaves. It's very significant to not see these terms as periods of unemployment; they are terms of leave.

With the passage of this particular amendment, the length of an employee's time on leave will be included in calculating length of employment, length of service or seniority for the purposes of determining rights under a collective agreement or a contract of employment. And the passage of these amendments into legislation would take precedence over contractual language, whether or not the contract refers to active employment. You could do it by regulation instead of waiting for a lengthy period of time.

I'll speak at the very end to the chronology of this bill.

There are substantive parts in this bill that represent the nadir of what you could be doing as legislators, the absolute depths to which you could plumb your efforts in terms of respect for the citizens of the province.

It's my understanding that Pat — I think her name is Ms Daley or Ms Coursey — was the last ADM in charge of employment standards, for maintaining employment standards in this government. I'm certainly not familiar with any critique of members of the current government, whether as candidates or as incumbents, that you rose to

the occasion to challenge that. It falls within the context of what the government has already done.

Other changes include Bill 7, which is to segregate full- and part-time workers from the same collective bargaining units.

You have a discussion paper on rent increases related to extraordinary operating costs that are not capped, including "utilities." But, of course, you realize Ontario Hydro and London Hydro rates have been frozen.

You've also passed Bill 20 and made changes to the Development Charges Act by regulation, ministerial regulation, whereby charges are now frozen. So with still funding water surcharges, for instance, in this community are still funding new industries, small or large, and even the local development charges monitoring committee regularly acknowledges that where the costs are borne they're borne by users of services, who are residential services.

There's a very high number of renters in this community. There's also a high number of people making very close to minimum wage. It's not a low number of people in this particular urban community.

One of the things that you neglect to do in a so-called improvement of employment standards is you don't remove the freeze that dates all the way back to January 1995 on the minimum wage. If you were looking for fiscal targets or valued savings and linkages, the only thing I could tie it to is a political promise of a stupid tax cut.

I'm sure business would generally approve of a continued freeze, but I don't feel that's your responsibility as a committee on resources development, human resources development for this province.

This community is also affected to a great extent by the health care industry. As there have been recent announcements about the changes to health care and change of delivery, certainly people in the field of home care are not as well protected as they need to be by the current minimum employment standards. And I would suggest some of the limitation periods certainly don't address concerns of a large number of workers in this community.

One of the things that you don't have in this bill is an increase in the number of paid holidays for the province, and that really puzzles me. It seems to me that's one of the obvious places to improve employment standards. I don't think there are too many people who wouldn't think an additional day off is needed in the months of November, possibly January and February. You should be adding at least three public holidays to the Employment Standards Act. It's long overdue.

Other people have mentioned the young men who were killed on the job here in London in May 1995. It was very distressing to sit through the coroner's inquest and hear a manager with the employment standards branch seemingly quite unable to answer the most basic question about enforcement.

I appreciate that it's a priority of the government currently to do a lot of political spinning to get your message out, so in terms of doing more for less, the Ministry of Labour has a desire to do a great number of things less, certainly less things. Asking workplace parties

to become more self-reliant in achieving standards; if you're going to do that, then why aren't you raising penalties, implementing real penalties and raising penalties, for non-compliance so that there's an impediment? The ministry will divest itself of services and programs that do not support its refocused core businesses. Maybe you should be going to the public to prove where you already haven't done that.

Finally, I will comment on chronology and timing. You have felt the need to go to the public with this bill, but frankly, it was because you were forced to by the NDP caucus. But you know, it only took you three days to pass the bill that's numbered one before this, Bill 48. And I appreciate Rob Sampson's payoff was a ministerial portfolio, minister for privatization. The amendments that he read in to the exemptions include — I'll just point out that's another misnamed bill, of course. It eliminates the tax-free allowance.

It's really interesting that a provincial Legislature presumes to redraft federal tax legislation. Rob Sampson's language, which has been taped, which he read in as the amendment to the bill, includes an exemption for an allowance for any other purpose. Presumably that would include extraordinary expenses incurred if there were another legal strike impeding legislators' entrance to the Ontario Legislature. That's an example of an allowance for any other purpose, which now is treated as an income-tax-free allowance used by members of the Legislature. It took three days to pass it.

Of course, one of the government colleagues who had dwelt in that not-quite-purgatory of enjoying preferential income-tax-free treatment of political pay from 1979 to 1993 and only paid regular income tax on his income in 1994, it appeared Mr Vankoughnet had that money burning a hole in his pocket, literally days and hours after Bill 48 was passed, read three times and proclaimed into law by the Lieutenant Governor in less than three days. Think you could do the same in terms of regulatory changes for the one minor improvement that's been made to leave for parental and pregnancy purposes?

I'd like you to actually do some work on the bill on employment standards and improve them.

The Chair: That allows us about two and a half minutes per caucus and we'll commence this time with the third party.

Mrs Marion Boyd (London Centre): Thank you very much for your presentation. I gather that what really irks you most about this particular bill is how it sits in context with other pieces of legislation that the government has passed and that basically what you're trying to do is alert people to the fact that this is a piece of a whole sort of plan which in fact goes through and takes away rights of workers and takes away the rights of individuals in many different ways. You've given us some examples of that.

1340

I was a little surprised that you didn't talk a bit more about Bill 7 in this context, because obviously it was the first bill that really said this is a government that is going to take away the rights that workers have had and is determined to rewrite the balance between employers and employees. The government keeps claiming they're restoring that balance so that it's there, and those who

oppose this kind of action say that what has happened is a disruption of this balance.

I gather what you're saying in your discussion of this is that this is just another piece of a larger puzzle which shifts that balance more and more in favour of the employer and puts employees in a much more vulnerable position.

Ms Smith: It does very much so. Bill 7 was passed on Halloween — "Boo." What's wrong with you people? Bill 7 as a context, as a set piece for what falls in place with Bill 26 — again, the misnaming of this bill as an improvement to employment standards is an insult to anybody who was educated in the public education system in this province. It's definitely part of a set piece: the changes to workers' compensation that are proposed, the notion of no stress-related injury in the workplace. The reality that a minimum employment standard touches a human being's life in Ontario is something that ought to be awfully seriously contemplated, and then get to work and do your job.

Interjection.

Ms Smith: It is. We're waiting for more.

Mr Baird: Thank you very much for your presentation. You mentioned minimum wage. What amount would you like to see the minimum wage at?

Ms Smith: If you did it by regulation quite quickly I'd be looking for a figure around, say, \$9.75 an hour minimum just to get everybody over the — phased, a short period of time; first change.

Mr Baird: I should say that during the election campaign we indicated that we would freeze the minimum wage. Like it or dislike it, it was certainly up front. It didn't come as a surprise. Do you know what the minimum wage is in comparable jurisdictions, our neighbours: Quebec, Manitoba, Michigan, New York?

Ms Smith: Yes, I do. There is a context, of course. When you look at American jurisdictions you'd look at the dollar, you'd look at the political situation in terms of electoral change. You'd have to keep in mind the woefully inadequate federal minimum wage and the way that that's structured. Certainly with the devolution, or Mr Harris out in Jasper asking for certain areas of jurisdiction, it's pretty frightening.

Manitoba for over a decade, for over a dozen years, has had a minimum 40-hour workweek and an eight-hour day in its employment standards that are rigorously enforced. They've had that for I believe well over 12 years. I believe it's lower in Quebec currently, and they've had a utility cost freeze as well. Among a number of things to be factored in and looked at that are in the purview of the provincial government, you would want to look at those issues.

Mr Baird: I certainly can't think of anyplace within 4,000 kilometres of here where the minimum wage is higher.

Ms Smith: Nor mutual fund investments.

Mr Baird: Some have said they would be happy to see the minimum wage increased, in your case to \$9 or \$9.80 an hour, even if that meant some people would lose their jobs. If that were the case, would you still support the minimum wage increasing?

Ms Smith: Mr Baird, it's really interesting that you would raise the context of people losing their jobs. I can

sit here as someone in my community who's really cognizant of, not so much in my own case, many other people whose work, unremunerated, is a substantial contribution to the economy, to the welfare of the community, to every aspect that touches the communities we live in, their viability, economic viability, livability, quality of life, resources development. If you put your mind in the context of what this committee can stand for in terms of resources development, I really think you would want to contemplate that there is all kinds of work done without remuneration in our communities. It may involve a bit of gender analysis, to be sure, but there's lots of work.

Mr Baird: What about the question, though? I'm very interested to know: If it meant that fewer people would be employed but making, let's say, a 50% higher wage, would that be acceptable?

Ms Smith: I don't accept your premise or analysis at all. I think it's deeply flawed.

Mr Baird: Do you have any economists who could indicate that this wouldn't be the case? I can't think of one.

Ms Smith: Let me point out that if I were going to write a theoretical paper on the privatization of universities, departments of economics would be the first part the private sector could pay for, not the public. I don't need an economist.

Mr Hoy: Thank you very much for your presentation this afternoon. I think that if the committee has economists coming forth, we'll ask them those hard questions, should they be here.

I appreciate very much what you've said today. We seem to have centred around the minimum wage discussion. I want to let you know that 30% of the people in my riding make under \$30,000 a year, so it's a very significant portion of the population of the riding of Essex-Kent. As well, I think that many people have come here and are fearful of a reduction in the minimum wage, let alone an increase happening. They're more concerned about possible reductions under this act and they've indicated clearly that the minimum wage provides people in Ontario with a quality of life which is very important to all of us. I think that's a concern of yours, particularly in the earlier part of your presentation.

We must be cognizant that the rich, yes indeed, can afford certain changes that this government is proposing, but I submit that the 30% of my riding is not interested in quick action by the government without any voice on their behalf. I appreciate people like yourself and others who have come in the last four days to speak up on behalf of those persons.

Ms Smith: May I respond very briefly? Mr Hoy, I'm surprised that's the statistic. I would have thought there would be a number somewhat higher than 30% in your riding whose incomes are under \$30,000 a year. I think that may be the case, and certainly the notion of a lowering of minimum employment standards, including the minimum wage — first of all, before you ever contemplate that even by regulation which, I suppose, all other things seeming to be equal and recreational drugs not being involved, it's possible that this government would contemplate doing that. But there would be enough people who read the Globe and Mail who would look for

a companion piece of legislation showing a dramatic reduction in direct indemnity, sessional indemnity, for the members.

The Chair: Thank you, Ms Smith. We appreciate your coming before us here this afternoon.

1350

LAZARUS COMMUNITY ACTION COALITION

The Chair: The next presentation will be from the Lazarus Community Action Coalition. Good afternoon.

Ms Jacqueline Thompson: Hi. My name is Jacqueline Thompson. I'm a member of the Lazarus Community Action Coalition and am on the steering committee of the provincial coalition as well as the Ontario Social Safety Network.

"Some persons of a desponding spirit are in great concern about that vast number of poor people who are aged, diseased or maimed, and I have been desired to employ my thoughts, what course may be taken to ease the nation of so grievous an encumbrance. But I am not in the least pain upon that matter, because it is very well known that they are every day dying and rotting by cold and famine, and filth and vermin, as fast as can be reasonably expected. And as to the younger labourers, they are now in almost as hopeful a condition. They cannot get work, and consequently pine away for want of nourishment to a degree that if at any time they are accidentally hired to common labour, they have not the strength to perform it, and thus the country and themselves are happily delivered from the evils to come." That's a quote from Jonathan Swift in 1729 from *A Modest Proposal*.

The Lazarus Community Action Coalition urges this standing committee to recommend against the proposed changes in the Employment Standards Act. The proposals of the present provincial government under Bill 49 require serious critique, consideration, alterations and clear evaluation criteria before they even begin to meet the reform promises as outlined by the minister and the Premier.

The Lazarus Community Action Coalition requested time to present to the committee today because we care about the people who live here. We care about the quality of life and the working conditions and standards in this province we call home. We are concerned not just for ourselves but also for the future and the conditions of the province we will some day leave behind for our children and our neighbours' children. We believe that as citizens we have a collective responsibility to our community and that the government is intended to protect and uphold the interests and values of the people who live here.

One advantage of being situated in a global economy which is often overlooked in favour of focusing only on the global market is that there are numerous successful examples of leadership and decision-making in the contemporary world beyond the less-than-successful neighbours to the south of our borders. In the global picture, these government proposals undermine our economy, our integrity, our principles and the social responsibility to our citizens. On a local level, as citizens and taxpayers we're appalled and outraged by the implicit

and explicit erosion of work standards and the impact these will have on the communities where we live, work and raise our families.

While there are numerous concerns with the proposed changes, as well as sensible alternatives, time restraints force these to be presented only in written submissions. However, the dismantling and proposed privatization of the collection function of the Ministry of Labour's employment practices branch speaks very clearly about where this government plans to invest our tax dollars. They propose to forgo investing in our communities in favour of seeking only to generate profits for private businesses and private interests. This specific amendment, like the others proposed in Bill 49, can be evaluated on the basis of factual information, economic analysis and social responsibility.

Beginning with the promotional rhetoric, the provincial government offers only factual misinformation. They promised to "focus on the resolution of claims by contracting out the time-consuming and expensive process of collecting money owed to employees by employers." This rhetoric presents the problem as issues of fiscal responsibility and accountability to the vulnerable employees.

Another implied benefit perpetuated by this rhetoric that is unsubstantiated by the ministry's own facts is the myth that a great number of collections are made by the ministry. In fact, the collection department was closed in 1993 and collection duties were reassigned to the employment standards officers. The Ontario Ministry of Labour employment practices branch annual reports from 1985-86 through to 1995-96 show that over the last three years, \$280,271,306, more than 79% in assessments against employers, remains uncollected by the ministry.

Furthermore, according to the Ministry of Labour expenditure reduction strategy 1996-98, the ministry intends to further reduce these positions from 150 personnel to 104. Almost one third of the entire remaining department will no longer be available to process claims for vulnerable workers in our province.

One more missing fact is the actual number of claims the ministry promises to focus on resolving. Routine investigations to determine violations have drastically declined from 1,304 in 1980-81 to a mere 21 investigations in 1994-95. The reduced number of employment standards officers ensures that this situation will worsen.

The facts indicate that this system is not working for the benefit of vulnerable workers, and the proposed changes that we see before us today will further reduce the ability to do so. An example in our own community that this failure to protect workers by enforcing and collecting claim assessments of the Employment Standards act has a detrimental effect: In 1989 the Magna corporation closed its Webster's manufacturing plant in London. Webster's and its parent company left workers without the severance and vacation pay dollars they were legally entitled to receive. This left workers in our community without adequate resources to provide for the basic needs of their families. While some of the dollars owed were made available to workers through the publicly funded employee wage protection program, additional publicly funded income assistance programs were required to meet the basic needs of these families.

Tax dollars were utilized as a business loan to Magna Corp, a loan that incurs no interest and has no guarantee of repayment. Indeed, the only monetary cost to Magna for assuming use of our tax dollars is up to 10% of the assessment or a \$100 administration fee. The loss of these dollars from our community also impacts on local businesses that would have provided services and basic necessities to these families. The hardship created for the families has never been assessed or compensated.

This example leads us to question the economic analysis that presumes shifting responsibility to the private sector will save taxpayers' money. Such a presumption can only be reached by glossing over or simply ignoring the impact analysis as direct savings in one department are subsequently downloaded into other jurisdictions. Closing the collections branch saved the province the wages and administration of one department; however, it directly impacted the number of investigations employment standards officers were able to conduct. This, in turn, reduced the number of potential collections.

Another option that was and is still available is to increase the number of routine investigations and improve the collections of assessments against employers in violation of the law. This would have created more jobs and, hence, a larger tax revenue base.

Secondly, procedures to enforce the Employment Standards Act are currently available under the act. The provincial government can now file certificates of the orders issued against the employers in court. The penalties assessed against employers, even at the \$100 minimum per claim over the past three years, will earn revenues of least \$4,718,200. The maximum revenues, using the 10% administrative fee, will potentially amount to \$20,827,130 for the same time period.

Additionally, when the publicly funded employee wage protection program covers the amounts owing to employees, it should not only be repaid directly by the delinquent employers, it should be treated as an investment of taxpayers' dollars as a business loan that incurs and compounds interest for the duration of the time it remains unpaid. In addition, employers who violate the legislation should be required to pay for the cost of collecting the money owed, over and above the minimal administrative fees.

Not only would the investigations and collections branches become mutually self-sustaining but the enforcement of reasonable sanctions would act as a deterrent and disincentive to further violations by employers and, subsequently, cut through years of accumulated red tape.

These are options that are both fiscally responsible and accountable to vulnerable employees. The folks in this community are aware that there truly is a mechanism available to focus on the resolution of claims, a procedure that is neither time-consuming nor expensive. Common sense is completely lacking in the proposed amendments, which leads us to the third set of criteria against which they should be measured.

Social responsibility: This is perhaps the area of the most reprehensible shortcomings of the proposed amendments. Time restraints force us to limit consideration to one area; however, I am confident that you now have in hand detailed documentation outlining the punitive nature of the other amendments.

Contracting out collections of assessment entitlement to private collection agencies will create the necessity of numerous solutions to deal with a whole new set of difficulties for the vulnerable in our community.

First, private collection agencies exist to generate profits, not to recoup the money employees are legally entitled to receive. The proposed amendments to the act automatically reduce the potential assessment by up to 75% of what the employee is rightfully entitled to receive. In addition to providing additional interest-free business loans to employers, workers are effectively losing 25% of their wage entitlement. This reduction is particularly devastating for unorganized workers who work in low-paid sectors or occupations such as food processing, foodservice, cleaning, telemarketing, domestic workers and homemakers. Many of these workers are women.

Secondly, to date, the Employment Standards Act has ensured conditions and terms of employment that are not subject to negotiations or disputes, including minimum wage levels, overtime pay, paid vacations, severance pay etc. While not particularly abundant, these basic standards maintained an equal playing field upon which employers can compete. Under the proposed amendments, the provincial government is interfering with the free market. As responsible employers who value the tax revenues of high employment in our community and the business it generates locally, we are appalled by the government sanctions to remove the equal standards currently in place.

1400

Finally, the money generated by employment to access basic necessities is reduced under these amendments and must be subsequently replaced by public dollars to care for the needs in our community. The workers have earned their money and they should not be expected, required or coerced to accept anything less. We find it appalling that you would further suggest that low-income workers must rely on the publicly funded court system to access the money that rightfully belongs to them. Not only is the overburdened court system funded by our tax dollars, justice is virtually inaccessible to those who cannot afford legal representation. In addition, we are well aware of the problems created by the interlinking and overlapping barriers that impact differentially on the poor and the vulnerable within our community.

One example is many citizens carry debts which they pay off slowly over the time when they're working. When employers withhold money that rightfully belongs to the employees, it places the workers in jeopardy of losing their credit standing and of being pursued by the same collection agencies to pay off their debts in full immediately. Thus, collection agencies will recoup the total of all outstanding debts as soon as there is any money to claim. In situations where employees cannot access money owed to them, they are effectively forced to rely on income assistance programs to get by. Furthermore, the Ministry of Community and Social Services will also recoup in full all money provided to the family during the time the income should have been available. Because the collection agency has the power to recover all outstanding debts first, the family may be charged

huge overpayments by the Ministry of Community and Social Services. This ministry will deem the income received, regardless of the fact the recipient had no access to or control of the claims processed by the collection agency.

There are numerous similar considerations that have not been taken into account in designing these amendments. Indeed, Gerry Coffin for All Canada Collect pointed out this morning that the proposed amendments were not well planned or researched and create conflicts and violations between acts in regard to the legislation governing the collection agencies.

This proposed bill does not protect vulnerable workers; it increases their hardship. This bill does not save taxpayers money; it saves businesses money and threatens to further reduce Ontario's tax revenue base, simply by reducing the potential taxable income of workers. It would be wise to consider facts in the future, such as the fact that corporate taxes only contribute 8% of the total tax revenues. It is hardly fiscally responsible to propose amendments that remove all hope of eliminating some of the deficit and, further, seek to cast the working standards into a status comparable to that of developing nations around the world.

In closing, I would like to remind you that this is the United Nations International Year for the Eradication of Poverty. If nothing more, it should serve to remind you that there are places in the world where minimum employment standards do not exist, where corporations produce goods for great profits in the global market, where folks sell their organs and their daughters to feed their families. The profits generated in these free zones provide what could loosely be defined as jobs and the profits are sucked out of the communities where they were generated. They do not make the communities a better place to live. They do not provide an adequate standard of living for the residents there. In fact, the presence of the profit generators ensures painful deaths and moral degradation.

If that is truly the vision this government has for our province and our people, then why bother putting us through this exercise of consultation? Why not simply abolish all standards today? After all, would it not be more profitable to have children producing goods locally, rather than having to import them all the way from Honduran sweat shops?

The Chair: Thank you. That allows us one minute per caucus for questioning. We'll start with the government.

Mr Tascona: Thank you very much for your presentation. I'm interested, with respect to page 9 of your brief, in your comments on the role that collection agencies play in collecting debts. You seem to be suggesting that the collection agencies have been very efficient in collecting debts involving the Ministry of Community and Social Services.

Ms Thompson: No, currently — and this is one of the reasons why this stuff needs to be looked at and researched — debts that are owing to collection agencies are protected under the legislation. They can't take Ministry of Community and Social Services dollars and apply them to debts because they are only for the basic needs of families. Under this legislation, that protection

is gone and the families don't get that money to survive and live on. They may go months with no income whatsoever under this legislation. You need to look at that change really carefully before you touch it.

Mr Tascona: We're not looking at that change. You're commenting on the role of collection agencies and you made comments about them. It would appear that they do a fairly efficient job in what they do.

Ms Thompson: So could the ministry if it would do the work.

Mr Tascona: The ministry did do it and it was disbanded in 1993 by the NDP. They laid off 12 employees, effectively terminated them, and we don't do it any more.

Ms Thompson: You're going to lay off one third more employees, according to your strategy. What you need to do is hire one third more and start processing those claims.

Mr Hoy: Thank you for your presentation this afternoon. On page 7 you say, "Contracting out collections of assessment entitlements to private collection agencies" — and I won't read the rest of it. It seems to me that what we could have in the future if we go the private collecting route is that like cases could be treated very differently from one to the other. One person, under the proposal that the government's put forward, might get 82% of what they were entitled to. Someone with exactly the same case or circumstances might only get 75%. That in itself I think is worrisome. I appreciate your brief this afternoon very much.

There was another group that made a comment that the Ministry of Community and Social Services may be ready to assure that people on workfare will be protected and will be watching over the employment standards —

Ms Thompson: They've already lost all their rights.

Mr Christopherson: Thank you for your presentation. I'd like to just pick up on one sentence in particular, on page 10 at the top, when you said, "In closing, I would like to remind you that this is the United Nations International Year for the Eradication of Poverty." The last presenter talked about this issue in the context of an overall Tory agenda that outright hurts the most vulnerable and the weakest in our society.

We know that the 22% cut in the income of the poorest of the poor in Ontario, the reductions in education transfer payments, the benefit cuts that are coming to WCB disabled workers, and now we've got this bill of rights for workers under attack — in the context of what the United Nations says, and I'm sure the government has mouthed the words somewhere by one of their ministers about how much they care about this, what is your sense of where we're going to be by the time the mandate of this government ends up in terms of the standard of living of the poorest of the poor and the working poor and the most vulnerable in our society, including this bill?

Ms Thompson: It's clear that they're moving towards a vision of the free zones where the corporate profits are all that matter. The communities where they're generated don't matter whatsoever. The profits leave the communities. The Lazarus Community Action Coalition believes in community and one of the things that we're doing in partnership with organizations around the province

through the Ontario social safety network is monitoring the effects on communities of changes such as we're seeing put forward on the table to take to the United Nations. Canada is up for review, specifically since the elimination of CAP and putting in place measures such as workfare. We will be drawing attention globally to the situation that this government is carrying on in this province.

Mr Christopherson: Very good.

The Chair: Thank you for coming before us here today. We appreciate you taking the time.

CHATHAM AND DISTRICT LABOUR COUNCIL

The Chair: That leads us to the Chatham and District Labour Council. We have 20 minutes for you to divide as you see fit.

Mr Buddy Kitchen: Okay. Thanks a lot. As an introduction, the Chatham and District Labour Council welcomes the opportunity to appear before this committee and to address our concerns regarding the Employment Standards Improvement Act, Bill 49. It must be stated at the outset that we believe our concerns about Bill 49 to be serious. The fact that we travelled 130 miles for a 20-minute presentation indicates our desire to be heard. I'd like to also say I'm very glad to see a couple of local politicians here, as opposed to talking to people I don't really know.

The Chatham and District Labour Council is the central labour body for private and public sector unions in the Kent county area. We represent 25 different unions and upwards of 11,000 members from a broad range of services and industries. These include truck manufacturing, auto parts suppliers, hospital and retail sectors, food processing, telecommunications and government services.

On May 13, 1996, when Labour Minister Witmer introduced Bill 49 amendments, she claimed they were only housekeeping changes to the Employment Standards Act. It is our view that what was presented as minor amendments contain substantive changes, changes which clearly benefit employers and diminish access to justice for both organized and unorganized workers.

The proposed changes will make it easier for employers to escape penalty where they violate basic standards and harder for the average working person in Ontario to enforce his or her rights. These amendments strip unionized workers of the basic standards they have built on under Ontario law for decades. Instead, under Bill 49 these basic standards will become additional items to be negotiated at the bargaining table.

We understand, according to a London Free Press article of August 20, 1996, the minister has now temporarily withdrawn a section of the bill centring around flexible standards, which is section 3 of the bill. This will not stop us from commenting on this section.

1410

Although we appreciate the fact that this most controversial amendment will come under closer scrutiny through a comprehensive review of the act, it is our view the reason behind the withdrawal of this section is directly related to two very significant and public events, those being the Ontario Federation of Labour's bad boss

hotline and the employment standards violations at the Screaming Tale restaurants in Belleville and Port Hope.

The OFL bad boss hotline was set up in early August as a toll-free line to allow workers to call in if they were experiencing problems at work, and it has generated more public attention and media scrutiny than this government wishes it would. At a time when this government wants to relax employment standards and enforcement, the hotline is receiving over 100 calls per day regarding violations. Calls include tales of employers not paying wages owed, not granting due vacation or statutory holidays, forcing employees to work beyond legislative limits. Other calls include complaints of firing without cause and harassment.

Realizing that this government has laid off a large number of employment standards officers, some employers have resorted to obscene tactics. As this government is shirking its responsibility in protecting vulnerable people in the workplace, the case of the Screaming Tale Restaurant came to light. In this case, the employer refused to pay servers in his establishment the minimum wage required by law. Instead, he said they were volunteer servers and were working for tips only. The official response to these complaints by the ministry was that it would take at least one to two months for the ministry to look into this matter. Complaints of this nature could be handled much faster if the Ministry of Labour would hire back the hundreds of employment standards officers laid off since last year.

The very nature of these violations is the core of the amendments this government would like to introduce. Witness the way employers comply with these present burdensome regulations now.

These are both classic examples of what happens when the provincial government puts blind faith in the goodwill of employers to provide a decent and fair workplace. What you get are bad bosses. These same employers are becoming accustomed to getting anything they want from this government and are feeling untouchable in this deregulated Ontario. They are abusing and exploiting their employees more than ever.

Failing repeal of this entire bill, largely because of the support given by the business community, I urge the minister to at least rename this bill and call it what it actually is, an Employer's Standard Act. As you heard this morning, it would be administered by the Minister of Corporations.

It is our opinion that any amendment to the Employment Standards Act has to recognize the enormous imbalance of power that exists between employers and employees. Accepting this, it then has to be recognized that individual employees, and in particular non-unionized employees, are in an unequal bargaining position in relation to their employers.

Employment standards then must concern the protection of workers. To that end, the Employment Standards Act and any changes must and should continue to institute uniform, fair and reasonable minimum standards to protect the interests of workers who are in an unequal bargaining position in relation to their employer.

The Chatham and District Labour Council sees no way employment standards in Ontario pose a barrier to

profitability, competitiveness and economic growth. What they can do is add a degree of stability to local economies by guaranteeing minimum standards in local employment.

This government claims the objective of Bill 49 is to simplify and streamline the enforcement and administration of the Employment Standards Act. It has already been pointed out that there is no problem in doing either now; it's just not being done.

I'd like to talk about some sections of the bill. With regard to the one pertaining to the flexible standards, realizing this is a section which has been withdrawn for future consideration, I would still like to comment. As it stands, this section allows the workplace parties to contract out minimum standards if the total package under the agreement, "assessed together," confers greater rights than the Employment Standards Act. Workplace parties are being asked to compare and value together non-monetary rights such as hours of work with monetary rights such as overtime pay, contingent rights such as severance pay, and mixed rights, which would include such things as vacation and statutory holidays. This is like comparing apples and oranges.

This amendment will make negotiated settlements much harder to achieve and destroys the intent of workers having the benefit of a complete and coherent set of workplace standards governing important aspects of their working conditions. I'll tell you right now, living in Kent county, they just settled one strike in Wallaceburg and there's another one in Tilbury right now. It's just proving to me it's harder and harder to get a collective agreement nowadays without having to go through negotiating what are considered to be basic standards now.

Enforcement for non-unionized employees: These amendments would download responsibility for the enforcement of minimum standards for non-unionized workers to the individual workers themselves, if they choose the courts to recoup what is rightfully owing them. This is time-consuming and costly. They can, however, choose the employment standards branch through a complaint, but are restricted to collect only \$10,000 regardless of what is owing. They have a short, two-week window to decide if they would like to continue under the act or withdraw and pursue a civil remedy. They lose recourse if they do not obtain the necessary legal advice by deadline. For an employee, this amendment is both restrictive and punitive. It does not serve the cause of basic justice in the workplace.

Maximum claims: As stated above, \$10,000 is the proposed maximum amount an employee may recover by filing a complaint under the act. The problem is that workers are often owed more than this. Workers who are owed this amount would probably not have the financial means to pursue this through the courts and are being forced to accept less than what they are owed. This could encourage the worst employers — and there are some of them out there — to violate the most basic standard and profit from it.

The minister will now have the right to set a minimum amount for a claim through regulation. Workers who make a claim below the minimum, which is as yet unknown, will be denied the right to file a complaint or

have an investigation. Imagine if the taxpayers of this province asked for the right not to pay their taxes if they were below a certain dollar figure and they got to choose that dollar figure.

Use of private collectors: This amendment will give private collectors the power to collect amounts owing under the act. It is ironic to think the government's solution to its own inability to collect moneys owed because it didn't enforce the act to begin with is to absolve itself of the responsibility and farm the problem to a collection agency. Tom Sawyer could take a lesson in whitewashing here.

Private collectors may be authorized to charge fees. No doubt, these will be passed on so that the individual who receives the money will be getting less than they are owed. Working people need the current system of public enforcement maintained and improved.

Limitation periods: I include this if only to show the hypocrisy of these amendments. Bill 49 changes a number of time periods in the act. The major change is that employees will be entitled to back pay for a period of only six months from the date the complaint was filed, instead of the previous two years. In contrast, the ministry still has two years from the date the complaint is filed to conduct its investigation and a further two years to get the employer to pay moneys owing. In other words, an employee having made a complaint under the act could wait up to four years before receiving only six months' back pay, not the previous two-year amount. Keep in mind that this could be reduced, depending on the amount the private collector collects minus the user fees.

In conclusion, as our comments on some amendments to Bill 49 and our comments addressed in our introduction indicate, no one concerned with basic minimum standards in terms of employment could possibly favour these amendments. Bill 49 is not about the protection of the interests of workers and it does not attempt to remedy the imbalance of power that exists between employer and employee.

As for the unorganized, Bill 49 is about the race to the bottom. It is about this government's effort to strip what little protection they have under the law away from them. It is about this government's openly aligning itself with the employers and the employer associations of this province, yet telling workers it is acting on their behalf. This is unacceptable.

1420

Mr Hoy: Thank you for being here today. I recognize the exact route you probably travelled to get here, very much so, and have always appreciated your attendance at any of the public forums I might have in the riding.

You talked a bit about the bad boss hotline. I assume the answer will be yes, but you say there are 100 calls a day coming in. Is it the OFL's intention to catalogue what type of infractions or complaints are coming in and then eventually make them public, and more particularly to the government?

Mr Kitchen: Actually, they are trying to do that now, but when they set it up they didn't anticipate the number of calls they are getting now and they don't necessarily have the capability at this time. I phoned the OFL for the statistics on Monday. They say that 100 calls a day is a

factual number. This highlights some of the things they receive.

Some of the other things they talked about were violations of minimum wage. Let's say, for instance, the minimum wage was \$1, and for eight hours they would pay them \$8. But really, particularly for young kids, to earn their \$8 they are having to work 10 hours to get it. On paper they're putting down that they are paying out the minimum wage when in reality they are not.

It's not just the OFL. Our labour council gets an awful lot of phone calls, particularly at this time of year, from people asking if there's anything we can do for them because of employment standards violations. A lot have to do with students and so on, particularly with seasonal work and what could be considered summer employment. So we get a lot of phone calls above and beyond this hotline itself.

Mr Hoy: We've also had submissions — and I think you're touching on it when you talk about unorganized labour — that it's a fact that there is a vast percentage of people who currently are unemployed, so the employment market is very good from the employer's standpoint. He has many people to choose from. People are willing to maybe look away from some of these infractions because they desperately need a job. The government has said that it was going to create 725,000 jobs over its mandate. Clearly that figure of almost three quarters of a million jobs would help to improve things vastly. What's your opinion on the government's performance to date in creating these 725,000 jobs?

Mr Kitchen: In Chatham, I'm represented by two different levels of government, provincial and federal, and both of them campaigned on a job creation program. There has been a supposed increase in jobs, and they're a new kind of jobs; they're called net jobs. I don't know really what those are, but both levels of government are taking credit for those, so these 35,000 new net jobs that have been produced in Ontario, is that 17,000 for the provincial and 18,000 for the feds, or are they both claiming the 35,000? I really don't know.

I don't see the jobs. The place I work at, we're into a massive layoff. A few years ago we hired 1,000 people. That was good for the statistics, but now they just laid off 1,200. With that there's the ripple effect through the community also. I don't see it. I have a 21-year-old daughter who has been essentially looking for full-time employment for over two years now and can't find it, so what she's doing is like many students are doing: going back to school.

Mr Christopherson: Buddy, thanks very much for your presentation. Good to see you again.

On page 7, I believe, you talk about the issue of a new minimum amount, a threshold that a worker has to cross in terms of money they're owed before the ministry will respond. In fact, in some documents it's been referred to as preventing nuisance claims, which is of course quite troublesome for those of us who consider every dollar a worker is owed to be a dollar they're entitled to. It's not anybody's nuisance; it's their money and they're bloody well owed it.

I'd like to ask you two questions. One is, given the fact that the government is giving itself the right to set

that minimum by regulation, which means in the cabinet room, not on the floor of the Legislature, and one decision of cabinet can move it, do you, on behalf of the people you represent, have a real concern that the long-term plan of this government is to slowly, when no one's watching, move that dollar figure up further and further so that workers lose more and more money that they're entitled to because it falls into that "nuisance" category?

Secondly, in the real world out there that workers face, especially those not covered by a collective agreement, do you see the possibility that if you've got a bad boss — and that's what we're talking about here, the bad boss — who is violating the laws anyway, can you see some of them actually sitting down and calculating: "Okay, the minimum is \$100 a year. That means I can go after \$50 or \$75 per employee every six months and they can't touch me"? Do you see that as realistic or is that just a lot of rhetoric?

Could you comment on those two things?

Mr Kitchen: No, I see that as very realistic.

Let me start off by saying I don't like things being done by regulation in the back room. I'm an open and honest person and anything I say will be open and honest and subject to debate, and I'll accept that fact. But the fact of the matter is, to do something by regulation in the back room which affects people and will impact their lifestyle, I don't like that way that government can be done. Yes, I can see that being done, and the impact of it being done that way really penalizes the person being owed.

Again, let's make reference to the concept of tax-paying. If I owe the government some money, they damn well expect me to pay it. They're not going to let me pay a minimum amount. I think they do have the freedom of a dollar or so, that you don't have to pay anything less than a dollar, but if I owe them money, everything they have coming, they expect. I think that should be the way for employees also. With a minimum wage that has been frozen now — and people will argue it's not at a livable, decent rate — people who are owed money, had they had to work at a minimum wage rate, yes, every dollar matters and probably every quarter matters in that instance.

I'm trying to think of the second question. Yes, there are bad bosses out there, there's no doubt about it, and I think I gave examples here of what bosses, if left to their druthers, would do. They're violating the existing standards, let alone watered-down standards, now. I think the reason they're doing that is because they understand that employment standards officers have been laid off and there's a possibility that they can get away with it. If they can do it at tougher standards, what are they going to do at lower standards under the same situation? I'm not by any means saying that all employers are bad, but there are bad employers out there.

The Vice-Chair: Thank you very much. Sorry to cut you off, but we're going over on each answer here.

Mr Kitchen: That's fine. I'm used to that.

Mr Ted Chudleigh (Halton North): Thank you very much for your presentation. Your comments on collections, particularly on summer employment and students, interested me. Ten years or maybe 12 years ago I went

through that process with my son, who had been stung with unpaid wages on his last week of employment, cutting grass during the summer. We were able to recapture the funds through the employment standards officer.

I guess in the debate we've been having for the last number of days, we keep hearing this term "bad bosses." We heard it yesterday in Kitchener and in Hamilton and in Toronto as well. I don't think anyone in government or out of government, in previous governments or in current governments, will support bad bosses. Certainly the chamber of commerce I think was asked that question in Kitchener or Hamilton and indicated they didn't represent bad bosses.

Mr Kitchener: Then we don't represent bad employees.

1430

Mr Chudleigh: Exactly. I don't think any legitimate organization represents bad employees either.

What the problem gets down to is identifying what a bad boss is, what a bad employee is, and not only identifying them but putting it in words in legislation that has teeth. That's a very, very difficult process.

We've been through the area of trying to collect money through the government in two or three different ways, and none of them seemed to have worked very well. We have never used the system of using professionals to collect it, collection agencies, which is proposed in this piece of legislation, and we are hopeful this will improve the situation in that area.

But in the area of identifying bad bosses, is there anything that you can help us with? What kinds of criteria do you look at? If you were out looking for a job and you if you did have the opportunity of two jobs, what would the criteria be to identify a good boss or a bad boss?

Mr Kitchener: Well, some of it could be reputation. A large turnover of employees could be indicative.

You're saying you're having a hard time collecting money. Just to get back to it, because I don't want to lose this thought, it seems to me this government has introduced — I don't know whether it's legislation, regulation or they're just at least talking about it — about recouping money from "deadbeat dads." This is a new thing. It was for a long, long time thought that they couldn't recoup this money, but now this government has found a way of recouping this money.

Mr Chudleigh: Not yet. We're trying.

Mr Kitchener: Yes, but I mean —

Mr Chudleigh: We're trying to do it through the income tax.

Mr Kitchener: Maybe we could do the same thing with moneys owed to employees from —

Mrs Boyd: Their driver's licence.

Mr Kitchener: Yes, take their driver's licence away, or maybe put their picture up at the post office or something along that line.

In one sector of the government you're saying government will recoup this money that's owed, yet in another sector you're saying you can't do it so we want to privatize it. To me that doesn't make sense. You've addressed essentially the same kind of issue in a different ministry, so why not try it here?

The concept of bad bosses might even go beyond dollars and cents. Some of it is you're trying to recognize scruples and morals possibly. We could have got into the same debate when anti-scab legislation was repealed, and I would have argued to you at that time that a reputable employer would not bring in scabs. I would say the same thing: A reputable employer, a reputable boss, would not purposely go out to screw his employees. But the fact of the matter is, there are some out there who are doing it.

You were saying about your son, your child who couldn't recoup their summer wages. I got a call last summer — and this happened to deal with this college painting, where they go around. It was extremely hard for us to do it. Despite the fact that we didn't have to, we tried to help this individual. Many times the community that they do the work in, the employer is in a different one. I don't know if you know where Chatham is, but when you come from Chatham —

The Vice-Chair: Excuse me, sir.

Mr Kitchener: — and you find out that it's in Mississauga, that's big-town Ontario compared to us and we get lost in it.

The Vice-Chair: I'm sorry to interrupt. We are about five minutes over now in the whole presentation.

Mr Kitchener: Are we? I was having a lot of fun.

The Vice-Chair: We do appreciate your sharing your thoughts with us today. Thank you very much.

UNITED STEELWORKERS OF AMERICA, SOUTHWESTERN ONTARIO AREA COUNCIL

The Vice-Chair: Could we have the United Steelworkers of America, southwestern Ontario area council, come forward. I'd ask you please, for the sake of Hansard, to introduce yourself to everybody present.

Mr Terry Coleman: Can I just start by saying that I'm slightly hearing-impaired and I'm having a little trouble. I don't know if it's the acoustics in the room. I'd ask anybody that addresses me to speak slowly and clearly, please. And I didn't hear what you said right now.

The Vice-Chair: Okay. I said welcome to the proceedings and would you please introduce yourself to the committee here as well as for the sake of Hansard.

Mr Coleman: My name is Terry Coleman. I'm here representing the southwestern Ontario Steelworkers area council. I want to start out by thanking the resources development committee, on behalf of our 3,500 members, for this opportunity to air our views on Bill 49. We administer 46 collective agreements in almost every sector of the economy in the southwest area.

It is with great trepidation that I come before you confronted with a piece of legislation authored by a government in a modern democracy that would call Bill 49 "An Act to improve the Employment Standards Act." The minister introduced this bill as housekeeping, and yet the potential impact of this bill is so far-reaching that shock waves were felt immediately throughout the province. How could a Minister of Labour, whose duty it is in cabinet to defend workers, be so out of touch with workers' needs?

Section 1, enforcement of the ESA — or not: Under a collective agreement, in section 20 of the bill, new

section 64.5 of the act, the Employment Standards Act can now be considered to be part of that collective agreement. It will then be the union's duty to investigate and enforce the Employment Standards Act through the grievance and arbitration procedures.

This change speaks quite clearly of privatizing enforcement of a public act. We need an open and public debate to see if the people of Ontario want or need their laws administered by a private body with no recourse to investigate, settle or determine claims. The union will not have access to an employment standards officer's report, personnel and employment records, setting the stage for abuse and obstruction by corporate counsel and ultimately ensuring that justice is not served. Considering the costs and liability involved to a small local union for supplying both fair representation and arbitrators' fees, it is out of reach to furnish this service.

If you will recall from my introduction, the southwestern Ontario Steelworkers area council services 3,500 members and administers 46 collective agreements. That means the average unit size is 76 members. A unit of 76 members simply does not have the resources to police the Employment Standards Act. Do we then pretend there's nothing wrong and not proceed? Who is served by this change?

We are of the opinion that privatizing enforcement is folly. In fact, knowing the conditions of employment today, enforcement needs to be given more muscle.

Section 2, enforcement for non-unionized employees — or not: This is speaking to sections 19 and 20 of the bill, section 32 and section 21. Taken together, these provisions are an unprecedented attack on people least able to defend themselves.

Firstly, they bar civil remedies for an employee to pursue both an employment standards complaint and civil action. Our council finds it ironic and inconsistent that in the field of auto insurance the government would allow new forms of litigation, but in the employee/employer relationship that same government would move to stop civil proceedings.

In any event, litigation is not a real alternative to working people. It is resource-consuming, both time and money, which many people simply don't have. This gets us back to an employment standards action which in lots of cases, although expeditious and inexpensive, is now faced with an unrealistic time limit to decide — two weeks — a cap of six months from the time of the claim for moneys owed, a maximum recovery of \$10,000, and an as yet undisclosed minimum.

Why does an employer need this kind of power over an employee? The Steelworkers area council feels these provisions are patently unfair and need to be scrapped.

Section 3, private collection agencies — or not: Section 28 of the bill, new section 73 of the act, speaks of a major departure in the field of labour relations. No longer is the employee/employer relationship seen as a special relationship, but instead treated as an ordinary activity of commerce.

This is shown clearly in the provisions of this bill as regard collection agencies recovering moneys owed to employees. At the present time, a serious problem with the act is the failure to enforce, and collections fall into

this category. We feel it is fundamentally wrong to absolve the government of the responsibility to enforce the act. If the collection agency can only recover a partial settlement, that agency can take a recovery fee for its services, a user fee, to supply a poor settlement. This type of provision will likely lead to smaller settlements and open the door to abuse. Collectors will pressure employees to take smaller settlements, providing a break to the employer, and the fee will be collected from the employee, probably the least able to pay.

1440

Unscrupulous employers will find their liability lowered, and thus encouraged to continue their violation of minimum standards. This particular provision is a working model of the race-to-the-bottom mentality of today's business community, and so it must be rejected outright. Our council feels that, as in other areas we have commented on, it is only prudent to enforce this important area of collections more vigorously through public enforcement officers.

Section 4, last-minute changes or not (minimum standards): I appreciate the fact that flexible minimum standards have been removed from Bill 49. I also understand that this concept is to be revisited in the near future. Therefore, I feel obligated to comment on this issue. The government takes the position that as a society we no longer desire or need minimum standards in the key areas of the employee-employer relationship.

The Employment Standards Act is about our society's minimum acceptable workplace rules. What has changed to cause these standards to become irrelevant? Is it that all employers have learned a new benevolence that they couldn't find under force of law? We don't think so. We at the Steelworkers area council are of the belief that the government, at the behest of business, has decided to abdicate its responsibility to the least fortunate in our society while business reaps the rewards.

The idea that minimum standards of hours of work, overtime pay and severance pay must confer greater rights than those set out in the act when assessed together is unworkable. This becomes an unruly mess when one tries to assess together purely monetary rights (overtime pay and severance), non-monetary rights (hours of work) and mixed rights (vacation pay and public holidays).

The Steelworkers have many agreements with amiable employers in this province that allow for ongoing negotiations during the life of a collective agreement to allow flexibility, as long as minimum standards are met. I fear for those relationships if basic standards are removed. Allowing employers to table what were once minimum standards while negotiating will certainly serve to frustrate in many cases an already difficult situation, we believe to the point of causing unnecessary labour disputes. This of course flies in the face of the goals of the act and does not reflect a commonsense approach.

It is the opinion of the Steelworkers area council that not only do minimum standards have to be retained; they must be improved if we are to build a better society. We ask that flexible standards not be brought back in the comprehensive review of the act.

Some minor positive changes: Vacation entitlement of two weeks per year accrues whether or not the employ-

ment was active, codifying pre-existing jurisprudence of referees. Termination pay is now due seven days after termination (section 5 of the bill). The calculation of service and length of employment will explicitly include time on parental and pregnancy leave, again codifying pre-existing jurisprudence. Although these are positive, we question the impact if enforcement is reduced.

Conclusion: We are very strongly opposed to the changes proposed in Bill 49. We fear for the employees of unscrupulous employers, both organized and unorganized. For many, it will mean undermining an already precarious existence. A modern, democratic society cannot afford to wash its hands of these people in the manner prescribed in Bill 49. Enforcement of the Employment Standards Act must not be left to the vagaries of the private sector. We feel that private collection agencies, along with the monetary cap and severe time restraints, serve only the employer's bottom line and the government's wish to withdraw from the solemn duty of protecting its citizens.

For these reasons, the southwestern Ontario Steelworkers area council asks that this bill be withdrawn from the legislative agenda.

The Vice-Chair: We have two and a half minutes per caucus, starting with the government side.

Mr Shea: May I ask you to turn to page 2 of your submission and ask if you could give me a brief elaboration on your comment, "enforcement needs to be given more muscle." Can we pursue that for a moment? Perhaps give me some illustrations that you think would be helpful.

Mr Coleman: To be quite frank with you, I think this body in front of me here is represented by all three parties. I've been around in the workplace for 25 years, so every party here has had a crack at being government, and quite frankly, you're all guilty of not protecting the unorganized in particular.

There are home workers, there are — I can certainly remember all through my career in the workplace. I've had seven jobs in 25 years, three non-unionized and four unionized. I have seen every kind of violation, and I'll tell you right now, in an unorganized workplace you have almost no rights. You can be paid below minimum wage. Quite frankly, every law can be broken, because you have no recourse, if you want to keep working.

Mr Shea: You put your finger on an issue that I know is of real concern to the minister. You have talked about home work, and that's a growing issue. As you may know, the recent city of Toronto planning statistics say one in five people is now working out of their home. That's a real concern reflecting a need to update the Employment Standards Act, so I'm concerned at how you perceive the enforcement being extended into that kind of a setting. I'd like your thoughts on that. How do you do that effectively?

Mr Coleman: Quite frankly, I'm unprepared to answer that. I've looked at it, and I'm quite convinced that what's going on here — I can't tell you what's going to happen any more than you can in the comprehensive review, but the changes here are certainly not doing anything to help it that I can see.

Mr Shea: Like you, I am as frustrated by the shortness of time to pursue questioning, but unfortunately, that's

the rule of the committee. Let me very quickly ask you —

The Vice-Chair: Mr Shea, you just —

Mr Shea: See what I mean?

The Vice-Chair: Sorry about that.

Mr Jean-Marc Lalonde (Prescott and Russell): Terry, were you satisfied with the actual Employment Standards Act?

Mr Coleman: With which one?

Mr Lalonde: The one we have in place at the present time.

Mr Coleman: No.

Mr Lalonde: I believe that the government has decided to let go 45 enforcement officers, but probably instead of letting them go, they should make sure they have proper training and make sure that what was in place was enforced. From what we have seen, and we were told ever since we started the hearings, people seem to be mostly in favour of what was in place, but it seemed to be that the enforcement officers were not properly trained to make sure that they followed the procedures. That is one of them.

The other one, the fact that we are going to go to privatize the collection, one part that I'm not too happy about is the user fee. I really believe at this point that the fact that the employer is entitled to be charged — or we will be able to claim up to \$10,000, and he knows the fact that we are going to a collection agency. He knows he has to pay, and he's going to drag it as long as possible to make sure that this employee doesn't get the full amount. He will be guaranteed 75%. That is the part that I'm really concerned about. The employer will be mad that we had lodged a complaint and he knows that he has to pay, but he's going to drag it as long as possible to make sure that the employee only gets a part of what is coming back to him. Do you feel that the fact that we are going to privatize, there's a danger at that point?

1450

Mr Coleman: From looking at what I can tell of how this would work in practice, I can almost guarantee you that — you know, I realize collections aren't what they could be right now, but of the ones that are done, they're going to get less now, I think, from the feel I get, from the look of this.

Mr Lalonde: So all the user fees should be charged to the employer, if it is up to \$10,000 plus the amount that the collection agency should be getting from the employer?

Mr Coleman: Well, yes. I realize there's probably an ideological difference here in what's going on. As far as privatizing or not, which I use quite a bit in here, it's then kind of flying in the face of doing business in its most economical form. Do we accept a certain tax level in order to have a fair playing field for all, not only employees but employers? Having them pay more on top of that, if it's a good employer, a mistake was made or whatever, they will pay, plus they will pay on top of that.

Mrs Boyd: Terry, thank you for your presentation. I know you're with an international union and that your union represents people all over North America, so you're familiar with the issues that are there in right-to-

work states. Although the members of the government are talking very much in terms of being concerned about employees, the reality is the overwhelming thrust of their legislation throughout their term in office so far has been to level the playing field down to the lowest common denominator, which is in fact what they believe is necessary in order to maintain competition. Do you see this kind of action against our minimum standards as really the first step, the thin edge of the wedge, in driving down employment standards and driving down protection for workers so that in fact that lowest common denominator will be closer at hand?

Mr Coleman: Actually, I think I mentioned it in the brief that it was part of the race to the bottom that labour has been talking about for a long time that really came about through the various free trade deals. It is all one big agenda, from my point of view, most certainly.

Mrs Boyd: I would certainly agree with you. I think this is just one little piece in that larger picture of how to in fact increase more and more power for employers, to enable them to call the shots, so they can show that they are able to attract the large profits that are going to impress international corporations. We've certainly seen that in negotiating over a number of years. I know your union has been in a position where in order to maintain jobs at all you have had to make some concessions and that is why the whole issue around minimum standards, that, granted, has been withdrawn for the time being, is really the heart of this change, isn't it, because it can force unions as well as the unorganized into agreeing to that erosion of standards that eventually leads to the lowest common denominator.

Mr Coleman: I've kind of come up with a novel concept lately. Quite seriously, I don't know that labour ever saw a problem with the idea of increased or freer international trade and the old theory of the level playing field, but does there not need to be then a level playing field in labour? We're all saying yes, but are we going to come up or are we going to go down?

Mrs Boyd: The last thing is on the collection issue.

The Vice-Chair: I'm sorry, we've now exceeded the time. Thank you very much for your presentation this afternoon.

Mr Shea: On a point of order, Chair: I want to make a point, just to make sure we're very clear, unless there's something I don't understand, that in fact employers do in fact pay levies.

But I want to make sure in the minutes — we received on our desk a moment ago a letter that is signed by a deputant who appeared just a few minutes ago, indicating in response to a question that, in her opinion, the minimum wage ought to be \$9.80 per hour. I have received on my desk, and I assume other members have as well, her attempt to correct the record. She wishes that to show \$19.80 per hour as the minimum wage. I want to make sure that is in the record. My record shows that this would then raise the Ontario minimum wage to \$41,184 a year, plus the ancillaries above that. I think that should be on the record.

The Vice-Chair: I will accept this as a new submission to the committee to be filed. Thank you very much for bringing it to our attention.

MICHAEL KLUG

DONNA HOGG

The Vice-Chair: I would ask that Michael Klug and Donna Hogg come forward, please.

Mr Michael Klug: Thank you. My name is Michael Klug and I'm a lawyer who acts for employees and trade unions here in the London area. I'm here today because I'm concerned about the effect Bill 49 will have on our clients and other workers throughout Ontario and on trade unions in general.

Simply put, Bill 49 is a malicious piece of legislation and I say "malicious" for a reason. It's not just the unintended consequences of this act that are bad; it's what the actual intent of the legislation is. I defy anybody to look at this piece of legislation and come to any other conclusion but that the intent of the legislation is to take money from the most vulnerable workers in this province and put it in the hands of the worst bosses, the cheats and the con artists who are the worst employers in this province. You've taken the most reputable bosses and the most desperate employees and you've shifted the power balance radically in favour of the bosses. That's wrong.

I'm not going to spend my time today giving a clause-by-clause critique of this legislation. That's been done by the Ontario Federation of Labour employment standard working group. They've done their job well and I support their conclusions.

I wish to grant the majority of my time to Ms Donna Hogg, whose daughter and some of her co-workers are clients of mine currently. I do this with the hope that in listening to Ms Hogg's story and the story of what her son and daughter have been through, you realize that this legislative gamesmanship you engage in has real effects on real people and that it causes pain to people and that you have to justify what you do under that standard. Why are we doing this to people?

Ms Hogg phoned my office a couple of months ago. She was in a state of great distress and asked me quite simply, "Is there anything that can be done or are we wasting our time with this?" The problems Ms Hogg's daughter had at work are simple. She'd been working since September 1995 without getting paid. She'd been working long hours. Ms Hogg will tell the story. I would ask you to listen to that and to consider in particular how Bill 49 will affect people in Ms Hogg's situation. Without further ado, I turn my remaining time over to Ms Hogg. 1500

Ms Donna Hogg: Good afternoon. Basically, last September 8, my daughter and son, who worked for a local landscape company, and two other employees were offered a deal from the owner, that if they worked from September till April with no pay he would turn over the company to them. They had worked there a total of about 17 to 18 years, my son working there for seven years, my daughter two years and the two other employees three and five years. They had no reason not to believe the owner. He had owned the company for 10 years, he'd always paid them, not holidays or anything, but he'd always paid them. They had no reason not to believe him. In any case, he laid them off September 8. They worked between 12 and 15 hours a day, seven days a

week, until Christmas. They did snowplowing over the winter. This was building up to a future. They had Christmas Day off. But they did do litter runs, they went to the university and did ice runs, things like that, they fixed the equipment, for the whole winter. In February and March, they went out and did sales for this company. They got several sales, good sales. Besides, they still did the snowplowing, sometimes as much as 30 to 40 hours a night and then came home and started all over again. They never had a weekend off, never, since that time, right up until June 28.

In any case, when April came, after they had worked these long hours, basically without pay — and we had hardship; we really did. We were terribly in debt. No one could help us. We're each of us about \$15,000 in debt, and that's at very low money; at times we didn't have money and had to go to the food bank. We're a middle-class family. We have never been on social assistance or anything.

In any case, to get that part done, my daughter-in-law is 39 years old. She had lost her job in Ottawa, at Revenue Canada, a changeover in staff — it was a subcontract for them — and she'd been there 17 years. She came down here and started out landscaping at that age, but she enjoyed it. Then, within two years, to have a chance to own a company was great.

He said he didn't care how they got through the winter as long as they got through it. In April, they were still snow shovelling, snowplowing — long hours. They asked him when it was going to be signed. He said, "We'll wait till the end of April, because you do all April's work." They still had no signed agreement or anything. He said it was against the law. Since that time I found out it wasn't, but he said it was against the law.

In any case, in May they started doing landscaping. There were four of them doing 75 contracts. They worked from 5 o'clock in the morning. I never saw them before 10, 11, sometimes 2 o'clock in the morning. They would work all day. This is seven days a week. They had one day off in May.

They believed this person when he talked to them. None of them had any kind of business experience. They were labourers. They had no idea. He said, "We bill them at the end of April, and then the money comes in the end of May" — and blah, blah, blah — "Just hold on; it'll turn out okay."

In the meantime, these people were killing themselves. They would come home, sleep for two hours, get up and go out. There was no break. They asked him for more help. He said, "No, it'll come out of your money." But they weren't getting any money. They got \$286 twice in May and two \$100 cheques in June. Out of that money, my son paid \$270 for gas for the truck, and he's never been reimbursed. One of the other lads paid \$162 out of his money — they have all the receipts still — for gas. The trucks were brand-new trucks, bought last year. They have bald tires. They have 70,000 miles on the trucks. They have no rear lights. They were stopped by the police and the Ministry of Transportation because a trailer didn't have the right licence on it. He was fined \$105. This has gone on and on.

In June they still had not received — except for that \$286 twice and \$100 each. They're thinking that this is

the Canadian dream, they're going to own this company; they are still believing in this person. Like I said, he is reputable. He has a 10-year company, actually 13, but 10 years where he has done reputable work. My son has worked there for him for seven years.

But during April when they went there, he said, "There's no money for you," slammed the door, "Don't come over to my house." You know what I mean? "You are this. You are wussies. What's the matter?" He's sitting at home; they're working between 100 and 120 hours a week, for nothing. Of course, they couldn't do quality work. What person who has three hours' sleep a night can work those hours? From May 1 until June 28 they had one Sunday off, and they were working 100 to 120 hours a week. They didn't know what to do, because he told them it was illegal, right, and until he signed the papers over to them they would have to follow his rules, so they listened to him. In the meantime, I'm harping on.

On June 28, something happened to one of the tractors. Now, none of the equipment was up to par. They had to sharpen their own blades. One night at 11:30, one of the guys was sharpening the blades in the dark in the shop and got a piece of steel in his eye. He left it in his eye and went home because he was so tired. The next day he had to go to the hospital. He worked all day his fingers holding open his eye because they couldn't get behind schedule. He went to the hospital and he was warned, "Do not tell them you were at work when you did it." So he didn't.

My son had a hydraulic line stick in his finger. He had to go to the hospital. He had to tell them he wasn't working. They cut his finger up. He had surgery to stitch it up because it was very poisonous. These people worked with no unemployment, no nothing, for 10 months.

On June 28, after they were asking questions — they were getting to be really militant about it. They said, "We're supposed to get a pay at this time. Come on, we're supposed to get a pay at this time." We did go and see a lawyer in May who didn't help us at all. He just told us that he didn't know what he could do. So in June, after this kept carrying on, they flatly refused to work.

We're in such debt — we owe two months' rent on our house; our phone was going to be cut off; our hydro was going to be cut off — because we were supposed to get paid in April. In June, we were supposed to get — and I phoned him and I said: "Listen, you have to help us some way. I'm going to be evicted from my house." He said on the 24th, which was a week later, he would have the money for me. I phoned him on the 24th and he told me, "You and your family are at the least of my list right now." This was June 24. So what happened? I borrowed the money off someone else. But we're in debt. We have nowhere to turn. My children have started working now for a new company.

Anyway, on June 28, one of the tractors broke. He said it was demolished. It was \$3,000. They said, "Well, we're so tired." Like, when they staged a work refusal not to work for one day and he promised them the world, they slept the whole time because they were exhausted. They were young, though, so their bodies are pretty resilient. Anyway, on June 28 they broke the tractor. They went there and saw him. He screamed and yelled and punched

the truck. This is not normal for him, but he has been like this for the last year, or the last six months, I would say. Anyway, he left. He came back on Tuesday after going away for the weekend, but they worked. He told them what to do with the other tractor. He came back on the Tuesday, wrote out a letter and said that the company has ceased operations.

I tried every member of Parliament, every bank, everywhere to try and get money so that I could get these contracts so that my kids could start a business, but we had no money for a year. Where am I going to get money in two days? That was it; they were out of work. There was no money. There was no nothing. There was no proof. There was nothing. So my daughter went around to some of the contracts and spoke to the people. They said, "We won't pay them," or, "We'll try and hold your money." But this has gone on for almost two months now. We don't know if they're still holding the money. He offered them nothing. He offered my daughter \$5,000 and the other guys maybe \$200; there was no set amount.

Now, the last contact I had with him, he is still working at some union — he's working doing landscaping. He still has the same trucks. He still has a lot of union contracts, even a government contract. But he's cutting grass. Where are my kids? They've gone to work for a new company. They had no problem getting a job. My daughter was under a lot of stress. She's had health problems. She's been hospitalized four times during the last two months, and it's all stress.

1510

He phoned three weeks ago and said: "I will give you the receivables from April on, and it's approximately \$21,000. You collect it." We went to the labour board, which is where we got Michael, and they said that to put in a claim it will take up to six months, maybe. If he goes bankrupt, the government will give us \$2,000 each. We can't wait six months. That day we were leaving and we were reading the paper and we found Michael. We went down there to see him and he said: "They can't treat you like this. They just can't."

That's the way it stands now. We've had no money since last September 8 except for the money I told you. They have all started working at another company now and we don't know what to do.

Mr Klug: Just very briefly, to pick up on how Bill 49 would affect this situation, consider first of all these "minor" changes that will increase the efficiency, as the government puts it, of the act and so on and so forth with respect to limitation periods. This is a claim of unpaid wages that lasts for 10 months, so right off the bat the new section 64.3 would act to basically give this employer four months' free labour: the first four months, bang, off the top. That's a gift from Ms Witmer and Mr Harris to this individual out of the pockets of these individuals.

Ms Hogg: I just forgot one more thing. The total amount of money owed to them is over \$100,000. That is not counting holiday pay; that is not counting statutory holidays. They worked from May 1 last year until June 28 this year without a day off, without a holiday, nothing. The labour board says that because it's supposed to be seasonal work — I don't know where "seasonal" work

comes in because they work all summer, and then all winter they do snow shovelling, snowplowing, whatever. It may not be permanent, all the time, but it's a lot of it. They may be out of work one or two months, but that's it.

The amount of money that's owing to them — the person is just laughing. We just added up the wages. Even if we add them up at minimum wage, they add up to \$92,000, with no statutory holidays and no overtime, yet he was allowed to send a letter to his customers to say that the reason he's ceasing operations is because his employees, his co-owners, would not work, that they weren't doing quality work and they were demanding more money. They weren't getting any money, but that was part of it; he was allowed to do that.

If they want to get anything like \$3,000, \$5,000, I have to go and collect, and the \$21,000 is just the money since April. The labour board told us, "Sign anything you want; just get as much money as you can get off him." What good is it if he's going to give me that? What's the labour board going to collect the money on to help us any other way? We owe \$17,000 for this little escapade, and that was doing dirt. We did without Christmas, we did without holidays — my family is in Ottawa — we did without everything for this, for nothing, yet he's free to do what he wants and he's very arrogant.

I actually think he is mentally unbalanced. He thinks he's God, and he believes it; he honestly believes that they screwed up for 10 months. He does. If he were here he would let you know that he gave them an opportunity and they screwed up, at four people doing 75 properties, including large ones, big two acres of land of government property. It's unbelievable. They didn't know whether they were coming or going. They weren't eating proper food because we didn't have any money, but they were working long hours.

Okay, I'm finished. I just wanted to get that out.

Mr Klug: As was pointed out, the restriction on recovery over \$10,000 obviously is going to cut severely into any remedy these employees could receive. What possible rationale is there for this limit of \$10,000 in recovery? You're basically saying, "If you rip people off bad enough, you win." It is going to act as an encouragement for employers such as this individual to really go for the gusto and get as much as they can out of these people. Once you're over the \$10,000 limit, then you're basically off to the races. I defy anybody to come up with any rationale for why, if there's a violation for more than \$10,000 — sorry, is it more difficult to administer over \$10,000? It's just basically a giveaway to the worst employers in the province and it's wrong.

Finally, another issue with the limitation period — actually, it's not the limitation period. I made reference to section 64 earlier. That's the provision, I believe, which restricts your right to pursue a civil action at the same time as an action before the Employment Standards Act. These employees arguably have an enforceable contract with their employer to get this company that was allegedly promised them in exchange for 10 months of free labour. It is quite arguable under the new legislation that they could not pursue that claim, as well as pursue their rights for a minimum wage under the Employment

Standards Act. Again, this is just basically a provision which is a giveaway to employers, and employers who don't need it, quite frankly.

Ms Hogg informed me, and she had some involvement with the company on this level, that the receivables for this company were somewhere around \$40,000 a month. As you can perceive, their labour costs were quite minimal during this period.

Ms Hogg: Nothing.

Mr Klug: This notion that he's going out of business and closing up shop — to recover these funds will not be easy in the best of circumstances. Under Bill 49 or, heaven forbid, whatever is due after Bill 49, it's just going to make it more difficult, if not impossible.

The Chair: Mr Klug, I actually let you go two minutes over our schedule, so we won't have time for questions. Thank you both for coming and appearing before us today. We appreciate it.

Is Tara Macdonald here, please?

Ms Tara Macdonald: I am, and I'd like to extend the extra time, if you'd like to take it.

The Chair: You're waiving your spot completely?

Ms Macdonald: Yes, to this group.

The Chair: It's a tad unusual, but we're slightly behind schedule. I propose that if the group would agree, we could give an extra 10 minutes to these people for questions, if that's appropriate.

Mr Hoy: Thank you very much for donating your spot to these persons today.

We have had a number of people come before us, but not a great number, explaining problems they've personally had with the Employment Standards Act. Yours is a case, it appears to me, that's quite likely going to wind up in court. I don't want to make a lot of comments about particular aspects of that. However, it does appear that we, this committee and eventually the government, are going to have to make certain in Bill 49 that people cannot be victimized by bad bosses.

There have been comments made since Monday, when this committee started, by others that we were racing to the bottom as far as employment standards, wages, time worked etc goes. Then there were references on occasion to Mexico and the perceived lack of standards there: low wages, long hours of work. But when certain trade agreements were signed, I can vividly recall in the press that the President of Mexico wanted his people to come up to the North American standard, not for us to go down to his. I think we have to keep in mind, as we deal with legislation and as the government presents legislation, that we ensure that we protect all citizens. I appreciate very much your coming today.

1520

Ms Hogg: Actually, before we go on, he was a very good boss. I'm not saying he was not. He was an excellent boss for seven years. What changed him around to this I have no idea. He had never given me an NSF cheque, which is common in the landscape business. I think what he did — this is what I truly believe and I've heard — is that he never paid the government, so they came down on him and he had to make some kind of arrangement. If he had gone to the employees and said, "The government says I have to pay \$80,000 or \$100,000," they would have worked for him for free, for

nothing, all winter because they cared about him that much. Now they hate him, they really do, for what he's done to them.

Mrs Boyd: I can tell it is a really painful thing for you to have to tell this story publicly. I'm sure there are those who would say that when people don't look into this kind of situation and protect themselves, they deserve to be victimized. I don't believe that. I think this is a very sad tale of someone wanting to take advantage of a situation and of the goodwill of people who want to work and want to be independent. I think their story, although different in kind, is replicated again and again. The most vulnerable employees are employees who are in exactly that position. They want to get ahead, so because of their desire to get ahead and to work and be independent, they are prepared to accept situations which they assume to be temporary in order to move forward with their whole agenda and their whole future. I think it's a very good example that you've given us.

Mr Klug: If I might pick up very quickly on that point, there was a significant factual element to this tale that Donna skipped over. At the time this great offer was made to these employees, "Work for free and you get the company," the alternative was, "You're fired." So there was an element of coercion here.

Mrs Boyd: Exactly. "You're laid off. You're finished."

Ms Hogg: They had worked there for a long time. It wasn't like they had worked there six months or something like that.

Mrs Boyd: But you see, this is exactly what everyone is worried about, particularly with the minimum standards issue in there. If people are allowed to negotiate away their rights because they're under that kind of pressure and that kind of threat, that's exactly the problem.

Just looking at the dollar amounts here, basically even without any of the additional things we're talking about somebody walking away — even at the minimum \$10,000 settlement under the Employment Standards Act as revised — with \$60,000.

Ms Hogg: It's probably much more than that.

Mrs Boyd: Certainly, if they were paid for vacation and so on. I guess what was said before was, this is a huge case of four people being victimized for a huge amount of money. But if you have 100 employees and you victimize each of them for whatever, a dollar, under this minimum claim which is going to be, you also stand to make a great deal of money. This is one of the issues we've got here, that if this act goes through, and I think this is what Mr Klug is trying to point out, it erodes anything that can really be called a minimum labour standard in the province.

Ms Hogg: The unfortunate part of it is that he's offered us \$21,000 in receivables, and I think they're going to take it because they are very bitter. It's going to take years or months. He's already spent upwards of God knows how much money during the time, so I think they're just going to take it. They'll collect the money and they'll chalk it up to experience. It's unfortunate, but that's what they're going to do, because they're not going to wait for two or three years for it to go to court.

Mrs Boyd: That's the other issue. Under this act it would go out to a collection agency, and that's exactly the kind offer a collection agency would be trying to get

people to make: to settle for less than they are owed in order to get anything. That basically is a really serious element of this.

It was interesting that one of the previous speakers talked about the family support plan as being done in a different way. I think you might be interested to know that that's exactly what's planned in the future for the family support plan, because it's going to go out to privatization as well with the Royal Bank and Unisys. We're going to see exactly the same kind of thing, people being told, "If you want anything, you'd better settle for this amount which is what we're able to collect." I think people have to be really aware that this is just one piece of a big picture which is allowing those who have to take more, and those have little to have very little recourse against them.

Ms Hogg: I knew you would have a good opinion on it because even though I'm not an NDPer, I called every member of Parliament's offices, and you were the only one who called me back. Every one I left a message at, unfortunately, and it's not being, you know —

The Chair: Thank you, Mrs Boyd. Mr O'Toole.

Mr O'Toole: Thank you for telling us a real-life story. I very much appreciate it. It really does bring to light real problems, that people do need to be educated and advised on their rights, and I hope these public hearings are serving that purpose.

Experience is the greatest teacher. It's a sad way to learn it for your children.

You did say, clearly, that you did contact the local MP and MPP?

Ms Hogg: That's correct. Everyone. I was hysterical. I really was. I could not believe it. I was hysterical and I tried to call every member of Parliament. It was holiday time, but I did call every member of Parliament who is in the London area and Mrs Boyd called me back.

Mr O'Toole: I just want to pursue a small technical thing. You have legal advice now and I think you're going about that now in a much more meaningful manner. I'd ask one question of perhaps either you or your lawyer. At the time of that agreement, "agreement" implies to me that there was — verbal or written is a contract.

Ms Hogg: Verbal between four people and the owner.

Mr O'Toole: There are witnesses, and that I believe can be established as a point of some sort of agreement. As a lawyer, I'm asking really the person whom you are paying to offer you advice to help us work through this. Is there, in your view as a trained professional, a contract when it isn't written?

Mr Klug: I believe there's a strong argument that there is a contract, yes.

Mr O'Toole: That's important to establish, and I would suspect, myself, any person would need to have the deeds and those kinds of documents for whatever properties or entitlements —

Ms Hogg: It's not a problem that way. I think —

Mr Klug: Let him go ahead.

Mr O'Toole: What I'm trying to establish — for us, the act in itself doesn't really cover individuals making those kinds of side agreements, and in fact the lawyer earlier on may have been of some help.

I just want to point out, though, that there is some opportunity here for you in this act. The act to be reviewed should look at section 32 of Bill 49, and making reference to subsection 82.3(4). In that it says that where an employer continues to violate standards under the act repeatedly over time, a one-year limitation period may apply.

You had a 10-month period, so even in this act, in the limitation period, with your 10 months you still could go the whole amount under the act as far as it applies to claim. But you would take the legal course; you'd be entitled to go for more than the \$10,000.

I just want to make one small other point on the six-month rule. If we educate people, individuals, not to let these bad employment situations linger — two years would have become much more complicated. That's what happens. It gets more complicated and more difficult to substantiate some of the abuses, if you will.

Ms Hogg: Does that mean with working this way that the labour board is going to work within a week or two weeks?

Mr O'Toole: I can't, at this point in time — you still have a period of two years, I believe.

Mr Klug: Just very quickly, the limitation period is still, even in those circumstances, being at least halved. I did note that provision, that there is at least some provision to go back a year before the complaint to look at funds that are available within that period, but it's still a significant reduction from the two-year limitation period that was in effect, and of course you've got the \$10,000 ceiling and you've got a choice, one or the other.

Under Bill 49, you would — whether or not there was a contract is a difficult question, and if unsuccessful these people would end up with nothing because you don't have that fallback on the Employment Standards Act. That's the problem.

1530

With the cuts — I can hardly resist — to legal aid that have been put in place, one has some difficulty launching into the type of complex litigation that would be required to establish that these discussions that were being held in some way entailed an enforceable contract or in some way gave rise to some other cause of action, especially given the financial wherewithal of the clients. So it's not just the Employment Standards Act; there are a number of other actions this government has taken that have made it very difficult for these individuals as well.

Mr O'Toole: Thank you very much, and again, we do sympathize with your story.

CANADIAN UNION OF POSTAL WORKERS, ONTARIO REGIONAL OFFICE

The Chair: That would then lead us to the Canadian Union of Postal Workers, Ontario region. Good afternoon.

Ms Elaine McMurray: Good afternoon. My name is Elaine McMurray. I'm the regional education organization officer for the Canadian Union of Postal Workers, Ontario region. Beside me is John Stevenson. He's a union representative out of our office. Our office is in the London area.

First of all, I have to apologize. I will, unfortunately, be reading most of this. However, we felt it very important to give our concerns and our objections to the bill. We are basically a federal union. However, we not only have members who fall under provincial jurisdictions but in fact we just organized the cleaners in the Kitchener post office, and we at one time had the certification for cleaners of Mr Gallant Services in Windsor, Ontario. We are currently on an organizing drive for other cleaners as well which fall under provincial jurisdiction.

Although the majority of our members do fall under federal guidelines and jurisdictions, as I mentioned, we do have some falling out. Previously noted groups plus other workers in delivery- or communications-related fields also respond to provincial laws and regulations, which we are finding out as we go about organizing other groups. Each successful organizing campaign brings in new groups and members under provincial statutes.

When the Honourable Elizabeth Witmer introduced changes to the Employment Standards Act, we, like many other unions in the province, reacted by scrutinizing what was being called "minor" and "housekeeping." We have no faith or trust in the present government in that what it proposes will benefit the workers in Ontario. After reviewing what has been tabled, we see that the end result, after the dust has settled, could be an eventual deterioration in all Ontario workers' standard of living.

As I mentioned before, even though we do fall under federal jurisdiction, we happen to live, eat, breathe, work and buy in the province of Ontario. As well, many of our members have spouses and children who work in Ontario and fall under provincial standards. If you look at Canadian statistics, most Canadian families now have two incomes at least in the family. What affects our families also affects us. If they suffer, we suffer. If they are stressed, we are stressed. If we are stressed, our productivity suffers. If our productivity suffers, our employer gets angry. So overall, not only are we affected, but so is our employer, who happens to be a federal employer. With over 20,000 postal workers in the province of Ontario — this is one third of Canada Post's total workforce — I believe Canada Post should be as concerned as we are.

On behalf of the members and the families, as I mentioned earlier, we are opposed to Bill 49. The changes only benefit those individuals who have the money and the cheats of this province.

If you note, a lot of vocabulary is now peppered with corporate terms such as contracting out, outsourcing, downsizing, fiscal responsibility, business plans and tax breaks, to name a few. I realize this may sound rhetorical; however, we do believe one of the corporate terms that should be added to the list, especially as this goes through, is one that we call "legislative boss cheats."

I had planned and hoped to bring members or their spouses to relate their own experiences. Unfortunately, they could not be here. Some are too busy to survive the 1990s pressures, and as I mentioned the cleaners in Kitchener, a lot of them are working right now and we don't have the ability to pull them off the job as easily as perhaps a federal postal worker can be. Some are also busy with two jobs, because a lot of our members are

also part-time, which seems to be a trend both in the federal and provincial jurisdictions.

But what has been told to me, and this is from members across our area, which extends from Scarborough to the Golden Horseshoe area or from Windsor to the Owen Sound area, is that they are calling what the OFL, the Ontario Federation of Labour, set up as the bad boss hotline. They are utilizing that line; they are encouraging their families to utilize that line.

The next portion of my brief, though, because this is just the brief introduction, will talk about some reviews on some of the key amendments.

To be blunt, and as has been stated earlier, we are in total agreement with the Ontario Federation of Labour's stand on Bill 49. Members in my region have participated in the calls for action by the Ontario Federation of Labour and will continue to do so. The attacks by the Ontario government on people while at the same time promising sweet tax breaks have allowed the Canadian Union of Postal Workers to mobilize our membership.

Bill 49: On the flexible standards part of the bill, prior to Bill 49 there were basic rights. We noted that. There were rights in Ontario that were quite similar to the basic rights as set out by the Canada Labour Code, which we are more familiar with. Contractual language could not erode the minimum standards as set out by the law. Prior to these housekeeping amendments or proposals that have been suggested, in any negotiations that took place, we, the workers, had a level playing field, which produced in the province of Ontario a higher standard of living than in other provinces.

If Bill 49 continues as is, by allowing the collective language to supersede the basic standards in areas like hours of work, severance pay, overtime, public holidays and vacation pay when a contract "confers greater rights when those matters are assessed together," this disturbs the workers' level playing field. It gives more to the employers; it gives more power to the employers. It disturbs the basic negotiating.

You combine that with the push for tradeoffs, with the legalized use of scabs, who are the underemployed, and it will before the end of the political mandate of the current government erode current minimum protections. That is something that I realize is possible, but in our minds it could be inevitable. We at this point in time have to make known that we oppose any deterioration in minimum standards which leads to a deterioration in the standard of living not only for our members in Ontario or members under provincial jurisdiction, but the members from across the country.

Employers in the past, in addition, have successfully used threats such as plant closures to achieve rollbacks. If there were no minimum rights, workers would be forced to either accept longer hours of work or less time off to keep jobs. With unemployment high — and this is something we also are affected by, even though we have employment — plus the fact that more part-time than full-time jobs exist now, not only in Ontario but in Canada, cuts in employment benefits and welfare combined with stricter rules on both UI and welfare place substantial pressure on a worker to keep the job as it is, rather than take any chances in fighting injustices, rather

than spending money in trying to get what is rightfully earned by them.

1540

The government, in proposing what is before you, is offering no protection for the workers.

Prior to the NDP government's changes to the labour standards or the labour bill, our cleaners in areas were not covered by successor rights. In the past, we had one company that was able to drag out negotiations till the eve of the expiration of their contract with Canada Post. The purpose of signing a collective agreement becomes meaningless within hours of the ink drying. Where is the protection to the employees?

What happened in this case was the cleaning contractor demanded that the employees provide names, the social insurance numbers of dependants and/or spouses so that moneys earned for overtime work could be paid at straight-time rates. From bitter experience we know that there are bosses out there that are able to manipulate what were labour standards at the time by employing illegal means such as I mentioned above, by forcing people to provide SIN numbers and names of spouses and/or children in order to have a cheque cut directly to them, instead of having a cheque for the overtime payment.

Watering down minimum standards will allow employers to legally do what they have attempted to do illegally in the past. The Canadian Union of Postal Workers sees flexible standards increasing labour disputes. Our cleaners, who are the lowest wage earners in our union, may never see the standard of living improve. With the elimination of successor rights, we could even see their jobs erode. That is very important to us.

Enforcement for the organized workers: Presently, unionized employees have access to the investigative and enforcement powers of the Ministry of Labour. The process has proven to be inexpensive and a relatively expeditious method for unionized employees, their unions and employer. Eliminating this avenue for unionized workers will place a burden on the grievance procedure. Under Bill 49, the Ontario government would successfully transfer costs to unions and to their employer for enforcement.

In addition, we can see a backlog of cases developing that will prolong the length of time before one of our cleaners could achieve a settlement. The Canadian Union of Postal Workers knows what grievance logjams are from bitter experience. We have also been successful in utilizing the grievance arbitration procedure to the tune of millions of dollars in arbitration. One of our locals, the Scarborough local in particular, has successfully won between \$10 million and \$15 million in moneys for our temporary, casual workers.

We know what it is to utilize the grievance arbitration procedure. We also know what a backlog is. It is appalling for any employer and any government to try to use that to negate the rights of workers.

The cost, though, for a union is high. Approximately \$3 million annually is budgeted from the Canadian Union of Postal Workers. As I said, we are a national union. We have about 32,000 to 34,000 members across the country. We budget for that and we have been able, because of that, to be successful in grievance arbitration.

However, even though our union is prepared for this there are other unions, smaller unions or bargaining groups that are not. We see these amendments as aimed at starving smaller unions into submission, while encouraging members of other unions, such as ourselves perhaps, to take their union to the Ontario Labour Relations Board with complaints of fair representation. We have also been exposed to that as well. Any employer who believes they will escape their share in payment for standards is banking on fool's gold. Unions will be obligated and forced to bargain for more to offset their members' legal costs. The bottom line? Strikes will be lengthy and vicious. When you put somebody's back against the wall, there's no other choice.

Enforcement and the unorganized: If these sections pass, we foresee the responsibility for enforcement of minimum standards for non-union workers being transferred from the Minister of Labour to the courts by way of the "other means" provision; also, the amount that is recoverable being capped at \$10,000, whereas currently there is no arbitrary limit.

Plus, if an employee chooses one avenue, such as to claim for severance payments to the ministry, then Bill 49 restricts that employer from bringing civil action for payment in lieu of a wrongful dismissal for additional compensation. We recognize what it says in the act.

What these proposals mean to us is that workers who want to file complaints will have two weeks to decide to choose between taking a chance in civil court or proceeding under the regulations of the act. In other words, if these changes pass, the government will have shifted responsibility from itself to enforce laws to the workers, who will have to decide: door number one, courts, or door number two, the act. If the worker chooses door number one, will they be entitled to legal aid to assist in any legal costs? Will they be able to understand the act if they choose door number two? Many of our cleaners have English as a second language and that provides another impediment. They do not know the laws and if they do not have a union to help explain the laws, then they have double jeopardy. They will not be able to understand what's in front of them. They will not be able to decide door number one or door number two. In that eventuality, they will lose out.

In addition Section 64.4 contains restrictive language in which, once civil action is started, employers are given the bonus of not paying wages owed. From our experience with employers such as Canada Post Corp, we can see them banking the money, collecting interest or counting it as a possible future liability. How does the worker gain from this? Bill 49 punishes the employees, not the employer, for the employers' abuses.

The ceiling on claims: The arbitrary maximum amount of \$10,000 seems to apply to amounts owing of back wages and other moneys such as vacation, severance or termination pay.

While the bill notes that violations of the pregnancy and parental leave provisions and unlawful reprisals are excluded, those benefits are insignificant compared to the amounts that other workers will lose with a cap in place. From our experience in dealing with complaints from pregnancy or parental leave provisions, we have also

utilized the Human Rights Act in trying to get justice for those members. Not only have we utilized the contract, we've utilized the labour code and we've utilized the Human Rights Act. I can't see any difference in this particular case.

Severance pay owed to a 20-year employee for a plant closure adds up to more than \$10,000. Arbitrarily maximum or minimum claims will encourage employers to bank the potential losses, or just to avoid any payments due under any contracts.

Private collectors: Bill 49 recommends that private collectors be used in lieu of the labour employment practices branch. Once again the Ontario government is shifting the burden of governing to the private sector and, on top of it, adding a collection fee. Victims get to pay for trying to obtain what is legally owed to them. This is morally reprehensible.

How can you expect workers, such as our postal cleaners, to afford trying to collect what is rightfully owed them? They don't earn enough — or are you advocating that people work for free, like the Screaming Tale workers who have been in the newspapers recently, for tips alone?

1550

In conclusion, our brief may lack for examples of victims; however, the Canadian Union of Postal Workers is concerned. Our members are concerned for themselves and for their families. What you propose in the legislation will impede our negotiations with our cleaners on a direct course. The Canadian Union of Postal Workers has a reputation for its militancy. Why force us to deploy what has always been considered by us and by our members as a last resort weapon, and that is strike?

We are also concerned that the Ontario government will set a precedent, not only for other provinces but for the federal government as well. So it may have a direct result on our members such as the cleaners, but it could have an indirect result on future negotiations and future labour standards. For example, we were informed that the Chrétien government had a draft of federal anti-scab legislation prepared which had been shelved into the dead letter office when the Ontario Conservatives repealed the NDP's anti-scab legislation. Whether we are federal workers or not, the Canadian Union of Postal Workers members work in the province of Ontario. Members of our families and our friends work under provincial regulations and laws. If you deny my family a right to minimum standards and justice, you are interfering with my happiness and living standards.

We see no benefits to the proposals under Bill 49. What we foresee if they pass as is are organized workers and their unions being forced into longer, more violent and bitter confrontations. The employers of the unionized sectors will see increased cost, rather than savings. Canada Post Corp, for example, by bitter experience, has spent millions in past labour disputes, and we are still here.

The most vulnerable, the unorganized or the underemployed will never see a better standard of living, which in turn will affect the buying power of the average Ontario citizen. If we do not purchase the goods or services in this province, then businesses will suffer.

They will lose. You have to look to the past — the labour strikes, the labour in the past, the working conditions, the past living standards. Our youth's morale is now low. With no government protection, they face a bleak working life. What affects them also affects us.

The Chair: Thank you, Ms McMurray. I actually let you go over, because I didn't want to interrupt your conclusion there.

Ms McMurray: Sorry.

The Chair: No, that's fine. Thank you both for coming in and submitting a very detailed brief. We appreciate it.

LONDON AND DISTRICT SERVICE WORKERS' UNION, LOCAL 220

The Chair: That leads us then to the London and District Service Workers' Union, Local 220. Welcome to the committee. Again, we have 20 minutes for you to divide as you see fit between presentation or question and answer.

Mr Mike Morin: Thank you. My name is Mike Morin and I'm representing the London and District Service Workers' Union, Local 220, which is an affiliate of the Service Employees International Union. Our local is a composite local. We deal with about 115 employers in a geographic area going east to the Kitchener-Waterloo area, north to Owen Sound, west to Sarnia and south to Lake Erie. SEIU represents about 53,000 employees in Ontario, of which about 27,000 work in 92 hospitals. Local 220 represents workers at 23 hospitals, as well as about 35 nursing homes and 12 or 15 homes for the aged. We also represent people in various community agencies and the public sector generally. Approximately 80% of our members are women.

I just want to read to you from the business plan that accompanied the bill, where Labour Minister Witmer introduced the bill as "administrative housekeeping...facilitating administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures." We find that what are being portrayed as minor changes are actually major structural and procedural changes. I heard one labour lawyer refer to Bill 49 as Bill 7 squared.

These changes will clearly benefit those people with a lot of resources and will hurt people who are low in resources. I think it's a clever act in conjunction with a number of other changes that will put a lot of financial pressure on the organized sector in Ontario, and the unorganized sector will simply be left hanging.

First, I'd like to speak briefly to the impact on the organized workers, in particular the section that forces the negotiation of certain employment standards. My understanding is that Labour Minister Witmer has decided to put this on hold until the fall when a more comprehensive review of the act takes place. We would still like to speak to that, with the hope that maybe it will be permanently shelved.

Before Bill 49 you knew what the standards were out there, and basically unions would build on that. If this act is passed with that particular part in it, then employers can now propose substandard concessions on hours of

work, overtime pay, public holidays, vacation pay and severance pay.

I'd like to run through an example and put it in some sort of context. The example I want to look at is overtime pay. Under the guise of flexibility, the employer can propose less than the standard. Presumably, as long as the rest of the collective agreement is valued at more than that, then that's within the law. It's not clear whether we're talking about the collective agreement just on those items or the whole collective agreement. However, to put it in a context, we now are in a period — I'm looking in particular at the health care sector, where most of our workers are — where to us this is an open invitation to the employers to put on the table various concessions.

With the overtime one, the employer may simply propose straight time, no time and a half for extra hours. You have to look at the health care sector, where we are experiencing layoffs and the work is becoming more and more part-time. So you have the desperate-for-work worker being pitted against the union, which is trying to maintain historical standards. The effect here is to create conflict between the membership and the union, and of course it will increase conflict between our members and the employer in terms of our members suddenly finding themselves faced with not being paid at a time-and-a-half rate.

How do you evaluate such a tradeoff? Do we do an audit of the amount the employer has saved, from time to time, on simply paying straight wages as opposed to overtime? Are workers going to keep a log and keep track of this amount or are they simply going to be very grateful for having been given some extra hours of work? I think we all know the answer to that question. How is this reducing ambiguity? It's not; it's creating ambiguity. 1600

The other area where both the employer and the union will incur additional costs is in disputes over evaluating whether the substandard working conditions are equal to or less than the collective agreement.

We also have to look at this in terms of other parts of the act, in particular where the onus is now going to be on the union to enforce the employment standards. Many of our workers are in the essential services, which means that they don't have a right to strike. The employers will simply put these proposals on the table because they've got absolutely nothing to lose; there's no lockout or strike here.

These changes, in addition to changes that came out through Bill 26 with respect to the Hospital Labour Disputes Arbitration Act, where arbitrators are now given certain criteria that they must consider, including ability to pay — so you have a shrinking health care dollar, lots of pressure there — the combination here is that an arbitrator can award these substandard provisions.

Enforcement under the act, section 20 of the bill: Again, we currently have a system that is relatively inexpensive and expeditious versus going through the grievance arbitration process. I'm not going to go into that much detail there, but for all practical purposes, the enforcement of the public legislation has been privatized.

Should these amendments pass without change, then it will be the responsibility of the union to enforce, police

etc. If they have a grievance, it will have to go through the process which structurally opens the door to — at the act allows for compromise settlements. If the member is not happy with that, then they can go to the Labour Relations Board. Whether they have a case or not does not matter that much, because certainly their dues will have to be used to have staff and/or legal representation there. It creates an added opportunity for chewing up limited resources that the union has.

With respect to the non-organized employees, and in particular we're looking at service workers who often work in foodservice industries, cleaning and so on, where the conditions of work tend to be fairly minimal, I can see employers using the part about negotiating employment standards to discourage their workers from considering getting organized. They may end up with lower standards on individual items than what they had before.

Enforcement: Again, the choice is between the court or the employment standards branch. Looking at these workers whose conditions are minimal, they will probably tend to opt for the employment standards branch because they can't afford the cost and the wait involved in going through the courts, that in conjunction with the fact that once they choose the employment standards branch they have a limit on the amount they can collect. If we look at that in context, most unorganized workers I believe are not going to file a complaint against their employer until they have either secured other employment or lost their job. By and large here, something could be going on for years and years, but it will only be at the end of that period that they will raise a complaint. This is a gift to a bad employer.

The same can be said for the time limit of six months. In that same context, they would go through the branch because the courts are too expensive. You must also consider the fact that the Ontario legal aid plan has been scaled back and no longer covers most employment cases. We see this as another gift to a bad employer.

The use of private collection agencies: This is opening the door to privatize the collection business as opposed to using public servants. What is particularly disturbing beyond the question of whether this will be more efficient is that it allows for settlements that are less than the moneys owing, and payment of the collection agency can come out of this amount, further reducing the money owing to an aggrieved worker.

The sections dealing with pregnancy and parental leave: We see these as clearly positive amendments which we support. The length of time on parental or pregnancy leave will be used in the calculation of length of employment, length of service, seniority and so on.

I would just like to quickly summarize our conclusions.

Negotiating the employment standards: We see this as clearly favouring the employer by opening up new concessionary possibilities, and in the public sector essential work area there's nothing to lose by putting those back on the table. It will simply inundate the arbitrators with more unresolved issues at the table. We would also like to note that the cost involved with evaluation and so on will be using up very precious health care dollars of the employer to deal with that litigation.

Enforcement under the collective agreement now being in the union's park: Arbitrators cost anywhere from \$1,000 to \$3,000 a day, and then you have your legal costs on top of that. This is an expensive proposition. It will deplete limited union resources, create some business for the private labour sector and eliminate public jobs. Again, we bring to your attention that precious health care dollars will now be going towards litigation as opposed to maintaining the level of health care service.

Limits on the monetary amount of a claim and on retroactive limit of six months: We feel this clearly favours the employers, especially when you consider that most unorganized employees will not lodge a complaint until they have either decided to give up on the job or found other work.

In conclusion, Local 220 finds that the Harris government is victimizing Ontario's most vulnerable citizens to cater to the wealthiest segments of society. In an attempt to avoid further unrest and conflict for a large majority of Ontario citizens, we encourage that Bill 49 be reconsidered and structured in a manner such that the legislation will achieve a fair balance between the unorganized, the organized and the employers.

Mr Christopherson: I'm glad we've got a minute left. You raised the issue of what would happen in terms of organizing drives and the impact on employers saying to potential union members, "You might end up with a contract that's negotiated below the standards." Conversely, on the issue of the impact on unorganized workers, the minister, on the day that she made the announcement in a scrum outside the House, was asked the question about whether it's possible for a non-union shop to bargain away Christmas or overtime or whatever — is it possible to change the minimum standards? The answer from the minister was, "I guess there would be that opportunity to make those changes." The reporter asked: "In a non-union shop? How would you go about doing that?" The minister answered: "Obviously that's something we would need to take a look at. Obviously there is the opportunity to make some changes."

1610

What would you think about that in terms of what kind of alternative method for collective thinking or collective action on the part of workers, if they're not organized through a union?

Mr Morin: The example I raised was kind of a ripple effect, where some people may think about organizing and on those particular issues, individual issues could end up substandard. My understanding is this is just the first round and the next round, presumably, they're going to be looking at the individual standards and they'll do what they're going to do there.

Mr Christopherson: I suggest to you that's very frightening in terms of the future of the labour movement if the government institutes some ability in some way — either that or the minister doesn't know what she's talking about; I'm giving her the benefit of the doubt. But that's quite frightening to think about the government providing some framework for collective action other than through a recognized union and proper bargaining agent. That's very frightening and the labour movement ought to be thinking about that, I would suggest.

Mr Tascona: Just with respect to a couple of matters in your brief; I thank you for your brief. At page 1 you say that in Bill 49, if passed in its present form, it's possible for the employer to propose standards that undercut the minimal standards with respect to a number of matters including severance pay. You may or may not know, but under the current legislation, a union has been given responsibility for negotiating severance pay and in fact, they can contract out of the act to deal with severance pay, and that's been in its present form for a number of years. I'd like to bring that to your attention.

One other area you were mentioning with respect to the enforcement of a collective agreement: Is rights arbitration quicker than the employment standards branch? The present turnaround time for the branch, I understand, is about seven months per claim and there is expedited arbitration under the Labour Relations Act, which is a far quicker process than seven months. I think that may answer your question.

But one other area I want to deal with you on — because the service workers' union is a sophisticated union, they've been around a long time. My experience is that they've negotiated — you'll find in collective agreements negotiated provisions that employers have to abide by the health and safety act, employers have to abide by the Human Rights Code, and in fact, I've seen collective agreements where they've had to abide by the Employment Standards Act. So that's something that isn't new and if that's the case in the collective agreement, then the employer, if they did breach the act, it's common for unions to file a grievance and then force them to comply with the standards under the Human Rights Code etc, and the health and safety act. That's not something that is new out there and I would say to yourself, as a service workers' union employee, that's something I would imagine you've dealt with in negotiating and administering collective agreements, that where those provisions exist, you'd enforce them.

Mr Morin: I'll just make a couple of comments. First of all, on the expedited arbitration, you're right, that is a quicker way to get to a hearing; however, to get an award to come down might take another six months or a year. So you may get there faster, but that doesn't mean the decision is down faster.

You're right about the fact that unions can file grievances on violations of the act; that's always been there. However, now we don't have the choice of using an employment standards officer. If we wanted to go that way, we could go that way.

Mr Hoy: My question actually was in regard to what was at the bottom of page 3 in regard to non-organized employees, as well, and you did answer part of that. It seems to me that there's kind of a catch-22 situation going on there for some of these service sector employees. However, there is one place where the Minister of Agriculture and I agree and that is probably where the foodservice-agribusiness sector is going to expand. I do agree with him on that, and that includes the hotel functions etc that you mentioned here. So I did take note of what you said here at the bottom of page 3. I believe that's going to be an expanding employment sector in Ontario. I appreciate your comments.

Mr Morin: Stats Canada certainly shows that particular sector expanding. If you want to go historically back, where manufacturing has been shrinking significantly, that sector has been expanding. The stats show that.

The Chair: Thank you for coming before us here this afternoon and making your presentation.

CANADIAN AUTO WORKERS, LOCAL 88

The Chair: Which leads us to the Canadian Auto Workers, Local 88. Good afternoon. Again, 20 minutes for you to divide. I understand there'll be two different documents you'll be presenting today. Perhaps you'd be kind enough to introduce yourselves for the Hansard reporter.

Mr Brian Daley: My name is Brian Daley. I'm from CAW, Local 88, in Ingersoll and I work at CAMI Automotive.

Mr Paul Brown: I am Paul Brown from CAW, Local 88, in Ingersoll.

Mr Daley: This submission is made on behalf of my local union, CAW Local 88 in Ingersoll, representing over 2,300 members. We have done a brief that will be going through to Toronto. We couldn't handle it all within 20 minutes and we sort of wanted to focus in on a couple of the issues that are in Bill 49 that we've got a grave concern about.

We are quite concerned about proposed changes to the Employment Standards Act and how these changes will affect not only our members but affect every working person in Ontario. One of the many changes we are quite concerned about is the proposal to allow workplace parties to contract out important minimum standards. If this proposal is accepted, it will allow the parties to legally have standards below the minimum standards set out in the act. It will allow a collective agreement to override the legal standards concerning public holidays, severance pay, overtime, vacation pay and hours of work if the contract "confers rights greater when those matters are assessed together."

This measure would allow employers, for example, the opportunity to trade off provisions such as overtime, public holidays, vacation and severance pay in exchange for increased hours of work. How one would weigh or measure whether or not a tradeoff like this confers greater rights is left unstated. That would become an issue in its own right.

The legally specified hours of work are 44 hours, at which time any additional hours are considered overtime hours with overtime pay. For example, let's say a gas station owner, which I once was, wanted an employee to work all hours that the gas station was open, say, 50 to 60 hours a week, without paying overtime. As the owner, could I not argue that due to inclusion of enhanced severance pay and an extra week of vacation — that is, three weeks rather than the minimum two weeks currently in the Employment Standards Act — that this confers greater rights when assessed together? Non-monetary rights (hours of work), with purely monetary rights (overtime pay and severance pay), and mixed rights (vacation pay, public holidays), are what parties are being asked to value and compare in this example. We can easily envision circumstances in which detrimental

tradeoffs are agreed to, despite the measurement problem referred to, given the inequality of power between employers and employees including many who are unionized.

This will enable employers to roll back long-established, fundamental entitlements such as hours of work, the minimum two weeks of vacation, severance pay and statutory holidays by comparing these takeaways to other unrelated benefits, which together can be argued to exceed the minimum standards.

This amendment alone is enough to make my member stand in opposition to the bill as a whole and we would hope make the drafters of these amendments rethink, not radically alter, Bill 49 for its potential to erode people's standard of living.

Viewed another way, if the central goal of the industrial relations system has been to facilitate negotiated settlements, this amendment runs counter to such an end. It will not only make settlements more difficult but will result in more acrimonious relations and industrial conflict. What were minimum benefits protected by law will now become permissible subjects for bargaining arbitration and labour disputes.

1620

If significant erosion in minimum entitlements becomes widespread in the many bargaining units where employees do not have sufficient bargaining strength to resist employer demands, it will indirectly impact on the standard of living and working conditions of all Ontario workers.

Some might see this as helping employers become more competitive, but the more sane will question whether this makes for higher productivity, better workplace relations, increased consumer purchases or an improved quality of life in Canada's most industrial and populous province.

Just to touch on one of the amendments that would allow unions and companies the right to agree to longer hours of work, I would like to tell you what our experience has been with working 48 hours a week. Our members have been fortunate enough to have negotiated an employee assistance program to help them, as well as the salaried staff, deal with the many problems that affect working people as a whole.

We have found in our workplace that we have an excessive amount of marriage breakups and other personal problems — drinking, drug abuse etc — that we attribute to the excessive amount of overtime we have been working. When we first introduced this service to not only my members but also to the salaried employee the service provider explained that their fee was based on the average user rate for a workplace our size, that being 4% to 5%. What we have found over the last four years is that our usage rate has been around 10% for unionized employees and around 3% to 4% for the salaried staff. The service provider was at a loss to explain why we had such a high usage rate until they were informed that we had been working 10-hour shifts for almost three years straight. They felt that the excessive hours of work would definitely explain why we had such a high usage rate compared to other workplaces. With such a high percentage of workers facing marriage breakups, drinking problems, drug abuse etc when only having to work 4

hours a week, we see no benefit in extending the hours of work longer when in fact we should be looking at a shorter workweek like has been successful in other countries like Germany, Sweden and so forth.

With the unemployment figures constantly around 10%, we would expect the government to be looking at doing the opposite of what is proposed in these amendments, by attacking the unemployment and under-employment problem rather than looking at extending the workweek.

As you can see from the examples given, we have many concerns about the proposed amendments of Bill 49. Rather than taking up the whole 20 minutes, we will be submitting the full text through Toronto, because I'd like Paul Brown to tell you about some of the cases he's had with the act as it is now.

Mr Brown: I'm here basically today not to speak of our members' concerns, as Brian said, and their opposition to Bill 49; basically I'm here to speak on behalf of my spouse, Joann Brown, who is here and who is a little nervous in speaking herself, not that I'm necessarily any less nervous.

Basically, her co-workers and herself have many concerns about Bill 49 as they work in a workplace that does not have a bargaining agent. Joann is and has been working as a hairstylist for the past 14 years. It is rare, if ever, that those in her line of employment enjoy rights and benefits conferred by a collective agreement. The only rights that these workers in this field have and weighed against that of their employer are for the most part the sometimes inadequate minimal standards as laid out under various legislation.

Hairdressing is an industry where the minimum wage is the norm rather than the exception. It is an industry where working with noxious and caustic substances is a daily reality. It is an industry where injuries such as carpal tunnel syndrome due to repetitive high-dexterity work occur all too often. It is an industry whose workforce is made up of some of the most vulnerable in our society, predominantly women, many of whom are single mothers, many who are of varied ethnic origin and visible minorities. It is an industry that all these workers can ill afford to have their currently fragile rights under the Employment Standards Act eroded by the introduction of Bill 49.

I thought I'd share a short story about Joann's experience with the act previously. A couple of years ago we were discussing statutory holidays and how pay arrangements were made for these holidays in our respective workplaces. I was quite frankly shocked to learn that where Joann was employed at that time she was not receiving holiday pay for a majority of the statutory holidays. When I asked her why, she explained to me that her employer had her scheduled on a Tuesday-through-Saturday shift arrangement, with Sundays and Mondays being her days off work. Her employer at that time took the position that since Monday was one of her days off, and that since the majority of statutory holidays fall on a Monday, she and her co-workers with the same shift arrangement weren't entitled to statutory holiday pay at all or a day in lieu of. I was also to learn that this was not only the practice of her then current employer but also of all her employers for the past 12 years.

Since I had some knowledge of the Employment Standards Act in my line of work, I explained to her that she was entitled to holiday pay for these Mondays and had been all along. I then explained that she and her co-workers should confront the employer about the situation and request that it be rectified with appropriate compensation.

What happened at this point I find interesting. Although reluctant, Joann did approach her employer in regard to the situation. Her co-workers, however, were much more apprehensive and decided not to do so. I believe their primary reason for reluctance was due to a fear of their employer taking some sort of reprisal against them for simply asking that their legislative rights be honoured.

When Joann did confront her employer, the employer initially denied that they had any obligation to pay her holiday pay, and it was not until a complaint with the local employment standards officer was launched that an offer of compensation was made.

The reason I share this story with you is that even under the current legislation one can appreciate how difficult and intimidating it is for someone like my spouse and others to make a complaint when they don't have the luxury of a third party to raise their concerns on their behalf.

Bill 49 makes this type of situation and experience all that much more difficult for people like Joann and others like her. Bill 49 allows the Ministry of Labour to prescribe minimum monetary limits on claims. Workers will be obliged to go to Small Claims Court to pursue a claim which falls below that limit. This would probably apply to people in Joann's line of work making minimum wages and not seeking large amounts, but money that is rightfully theirs and very necessary when living under this type of wage.

Bill 49 reduces the time during which a worker may bring a claim to recover money from two years to six months. In Joann's situation, she was entitled to 10 days of pay owed to her. In the same situation under Bill 49, the most redress she might be able to seek is three to four days. Unfortunately, situations such as what Joann went through are all too common, and Bill 49 does nothing in the way of correcting that.

The emphasis on any changes should be directed at educating the public, employees and employers about the requirements of the Employment Standards Act. The Ministry of Labour should provide public education and conduct active outreach regarding the purpose and function of the law.

In British Columbia there is a statutory requirement for the Employment Standards Commission to provide public education. Employees will only be able to enforce their legal rights if they know what they are. Thus, there should be a legislative provision requiring that a summary of the basic standards provided in the Employment Standards Act be posted in each workplace. This presently is the case in British Columbia, and it is also the case with the Occupational Health and Safety Act in Ontario that requires employers to post a summary of employees' rights to health and safety at work in all workplaces.

The focus of the ministry regarding the Employment Standards Act should shift from collection to prevention of violations. An aggressive system of audits would go far to remedy this focus.

The ministry should consider allowing complaints from third parties in order to preserve the anonymity of employees fearing reprisal. The ministry should initiate a much more aggressive policy of prosecuting employers who violate the legislation. Currently, prosecution for violations of the act are exceedingly rare. Repeat offenders should be subject to significant fines.

1630

Finally, although the legislation allows for the reinstatement of employees who have been fired by employers for making a claim, without union representation reinstatement is simply ineffective. In order to deter employers from retaliating against their employees, there needs to be a substantial financial penalty imposed against such employers.

That concludes my submission.

Mr O'Toole: I just wanted to pick up on one small thing. I believe under the current legislation there is an entitlement to apply anonymously. Were you aware of that?

Mr Brown: My understanding was that the complainant would have to launch the complaints.

Mr O'Toole: Well, there is.

Mr Brown: Okay.

Mr O'Toole: It's just a clarification. For your CAW, a very large, researched and well organized union with some 135,000 members, do you feel that the current act is working?

Mr Brown: I certainly think there's room for improvement with the current act, but I do not agree that this bill is the means to getting to those improvements.

Mr O'Toole: Do you see the CAW, Buzz Hargrove and the leadership of the union movement participating in phase 2 of the discussions?

Mr Brown: I think you would have to discuss that with Buzz Hargrove.

Mr O'Toole: Do you have to discuss all decisions locally with the president of the CAW?

Mr Brown: No, absolutely not. We have the independence —

Mr Christopherson: It's not the Ontario cabinet.

Mr O'Toole: Would you participate?

Mr Brown: Yes.

Mr O'Toole: Good. Thank you.

Mr Hoy: I won't ask you what you think other people are thinking. Thank you for your input on the British Columbia experience as far as making people aware. This seems to be a recurring problem, people not knowing what their rights are, particularly in small workplaces and/or unorganized.

It seems to me that when small business men and women go out to start a business, when they find out about real estate, and location, location, location is very important in business, many aspects of the law, they probably do find out what the minimum wage is. It's to their advantage to know that and not pay too much.

It appears that there are many employers and employees who don't know about some of the other

statutory parts of the act, so it's very good that we have a recommendation that perhaps the British Columbia experience be used. I appreciate your comments on that.

Mr Christopherson: Thank you both for your presentation. Paul, I want to draw particular attention to the issue you raised around Joann's claim that she was entitled to 10 days, and under the new law she would only be entitled to three or four days.

Consistently since we've started these hearings in Toronto, Hamilton, Kitchener and now here in London the government and their supporters have said it has to be cut back to six months because these things need to be filed in a timely fashion. In one case a representative from a chamber of commerce said they have to stop employees from sitting on the can and mulling over what they're going to do this, as if there was some kind of game-playing.

I think this is probably the best and clearest example of how workers lose money they're entitled to by the change in law. I assure you I'm going to use this example across the province to show that at the end of the day the government is facilitating theft. That's what it amounts to: stealing money that employees are entitled to because they changed the time frame. It's got absolutely nothing to do with efficiency or workers playing games; it's a matter of being able to collect money they're entitled to. I thank you very much for bringing this forward.

CANADIAN AUTO WORKERS, LOCAL 27

The Chair: That takes us up to the Canadian Auto Workers, Local 27. Good afternoon. You have 20 minutes to use as you see fit.

Mr Jim Reid: Good afternoon. I'm Jim Reid, the recording secretary of Local 27. I thank you for allowing me to make this presentation on behalf of the Canadian Auto Workers, Local 27, London, Ontario. Our amalgamated local comprises 23 different workplaces producing everything from locomotives and light armoured vehicle at General Motors Diesel to transit mixers at London Machinery, auto parts at Siemens, Accuride and Siebe envelopes at Globe and lightbulbs at Phillips.

I am actively involved as a board member of the Low Income Family Empowerment*Support Parents' Information Network, Life*Spin for short, who made a presentation to this committee previously in the day. I'm presently the program chair of the London Unemployment Help Centre.

Today I'm privileged to be a member of a union where my rights in the workplace are respected only as a result of decades of struggles by workers who fought long and hard for employment standards first established through collective bargaining and later through legislation. This local union that I'm so proud of does not only speak out on behalf of the workers we represent in the London area but also on behalf of those who have no voice with their employer or feel threatened to speak out publicly for fear of reprisals.

I think you've seen some examples of that today. Quite honestly, I don't think you're really hearing from the people whom the changes to the current act will affect. Quite honestly the people, the disenfranchised, the mar-

inally employed will have great reluctance in coming before a public panel in a public place and speaking out against their employer. This is what the role of labour and community groups has to be, with this government especially.

In this community and in this province, many workers are denied the most basic rights enshrined in the Employment Standards Act. I can tell you that as a young worker getting my first full-time job, I was cheated out of my vacation pay and overtime pay by my employer. I made a complaint to the Ministry of Labour, and while I received what was owed me, I soon found myself to be laid off and replaced with another worker. That was 24 years ago. The only thing that's changed is that today we're seeing more deadbeat employers who refuse to pay workers years after orders are issued. Today's reality is that nearly six out of 10 workers will not receive what's owed them.

The answer to this isn't privatization of collection services. Workers will suffer as collection agencies push for a quick settlement and a quicker payment of their own account. Employers will be even more obstinate in avoiding settling up with workers if they feel they can play "let's make a deal" with the private collection agency, using the money owed the worker, with the shameful complicity of this government.

Maintaining the current legislated minimum standards in their entirety will ensure that the increasing numbers of small business employers do not compete solely on the basis of lowering wages and deteriorating job conditions, once again the race to the bottom. This seems to be the agenda of this government: to drag down the standards for working people in this province, to drag them down to the right-to-work states in the southern United States, to drag them down to the maquiladoras in Mexico. To this union, to this local and this community it is totally unacceptable.

The Minister of Labour, Elizabeth Witmer, misleads the public with her claim that Bill 49 is just streamlining the act, encouraging compliance and simplifying administration. She claims Bill 49 is just housekeeping. Bill 49 is more like house-wrecking. It's knocking out the basic floor of rights for unorganized and organized workers.

Bill 49 attacks the most vulnerable workers in this province. It is a vicious attack on women workers, garment and textile industry workers, workers in the hospitality industry, domestic workers and others trying to gain a foothold in today's ever-shrinking job market.

This act is part of the neo-Conservative, Reform Party Harris agenda of redistributing wealth from the marginally employed, the poor and the working class to satisfy the greed of multinational corporations, chamber of commerce leeches and lobbyists and the wealthy in this province who believe that it is their inherent, God-given right to exploit and cheat the workers of Ontario.

If Minister Witmer had her way, we'd all be indentured servants. If you think I'm exaggerating, you only have to refer to the statement she made in the Legislature: "An order to pay from the employment standards branch...could prematurely bring in other creditors. Eliminating the right to be paid would save some small businesses from being forced into bankruptcy."

1640

If I'm working for an employer and receiving no compensation — as we heard, this is a reality in this community — who's paying my rent, who's putting food on the table for my family and who's paying my taxes and, with them, your salary?

Extending Minister Witmer's logic even further, more companies would be saved if they didn't have to pay workers at all.

Sadly, as I make this presentation to you today, there are workers not being paid for their labour or being paid less than minimum wage in this city. Some will be employed by legitimate businesses and some by sleazy fly-by-night operators. These are the workers desperate to work at any cost, who line up at the casual labour pool every morning at 4:30 and 5 o'clock. Some of them camp out all night.

Ten years ago, I was one of those workers, finding myself out of work, out of money and out of luck, and desperate to survive. Today, even more workers are in that situation, trying to survive on casual contract, part-time and temporary employment. These are the only jobs that are being created in Tory Ontario.

Mike Harris came out a little while ago claiming that the Tory government had created 35,000 jobs since it had taken over. It's funny. I met a woman who got three of them: one at a fast food restaurant, one cleaning offices at night and a weekend job working in a restaurant. These are the types of jobs that are being created in today's pro-business, pro-corporate Harris Ontario.

The Employment Standards Act does need to be changed, but not to the sole benefit of corporate Ontario and the chamber of commerce. The act does not go far enough to protect workers from unscrupulous employers. Bill 49 emasculates the act even further.

If this government cares at all about the majority of Ontarians who are workers, it will strengthen the act and enforcement of the act in the following ways:

- (1) It will allow anonymous complaints.
- (2) It will increase penalties for deadbeat employers.
- (3) It will require the mandatory posting of the act in all workplaces, as is the case with the Ontario Occupational Health and Safety Act.
- (4) It will institute severe penalties for firing a worker trying to enforce the act.
- (5) I would encourage this government to reactivate the Ministry of Labour collections department and fund it with fines from employers who do not pay out orders within short, fixed periods of time.

Local 27 of the CAW wants to see the Employment Standards Act improved by providing more effective and efficient ways to enforce the rights for workers, unionized or not.

To conclude, what we will see with Bill 49 is the gap between those with well-paying jobs and those with marginal, low-wage jobs widen. As the polarization of the labour market increases, so does poverty and inequality.

Will obstructing and depriving workers of even the most rudimentary access to workplace justice contribute to economic growth in our economy? Will changes to improve the act contribute equitably to our societal fabric, or does it tear wide open divisions between worker and business owner, union and corporation?

I am speaking to the Conservative members of this panel: In your hearts I think you know what the answer is. When it's time for you to retire from government — and I hope that time is soon — and if you're honest and if you care about this province, you will see what damage this government has done to the environment, to the disenfranchised, to the family, to the worker, and your legacy will be one of shame.

That concludes my submission.

Mr Hoy: Thank you very much for your presentation today. You gave a synopsis at the end, on page 4. The mandatory posting of the act in all workplaces seems initially to me to be a very good idea. The act is not well known to very many, as I mentioned to people just prior to you and throughout the hearings, either employers or employees. We've had submissions state that the employer on occasion simply made a mistake and didn't realize it. Of course, there are others who know full well what they're doing and are circumventing the law with total knowledge of what they're doing, but we've had numerous submissions suggesting that there are employers who really honestly have made a mistake. So I think that's a constructive input.

The question of fining employers — another situation I was involved with involved bankruptcy — is a very difficult situation. I'm not suggesting that fines are not recommended from time to time. At one time, for pollution, there was a discussion that companies that pollute would be brought to near-bankruptcy. Then it was, "Let's put all of the board of directors in jail," and things of that nature. I think we have to walk very carefully on the fining situation. I agree that when you disobey the law there has to be a penalty, no doubt about it — don't misunderstand me — but I think we have to be very careful about the level of fine so that we don't jeopardize other workers, as has been suggested on other days, where you could have everyone out on the street. Clearly, I appreciate your comments here. The fines are a situation that has to be taken very carefully, that we don't harm others because of what we want to do.

Mr Reid: There is only one thing that a businessman understands, and that's money. That's the only thing that's going to get his attention to get him to stop violating the act. There are employers who continually violate the act. The workers will make a complaint. Quite honestly, years ago I used to hear stories from employers that when an employee would make a complaint to the Ministry of Labour, the Ministry of Labour inspector would come in, issue an order and tell the employer to pay the worker what was owed him, but he would tell the employer, "Get rid of him; he's trouble." This is what happened. This is what the mentality was.

I don't work in the non-union sector; I haven't for the last eight years now. I'm not really aware of what's going on that much in the non-unionized work environment, but I can tell you from my own experience that this was the case. The Ministry of Labour was tilted to one side, was tilted vastly in favour of the employer for many years, and to some extent I think it still is.

The Employment Standards Act provides a series of loopholes for the employer to get out of his obligations, to work around the act. It attacks the most powerless in

our society. Bill 49 just exacerbates this situation going to cause more grief, more hardship, more poverty in the community. It attacks the very people this government should be trying to protect: the poorest in the community, the most vulnerable in our community, it's doing is creating more barriers.

I strongly believe in a strong enforcement policy, a privatized collection agency but a strong enforcement policy set out by this government. Let's use the language of the Harris government. Let's give the Ministry of Labour the tools to collect the fines, to make the act self-sufficient, to make this collection agency for itself. But when an order is issued, many times there's no fine levied against the employer. The employer collects what's owed to him, but there's no penalty imposed on the employer for violating the act in these cases. So who pays for it? The taxpayer pays for it.

1650

Mr Christopherson: Thank you very much for a very impressive presentation. I have a couple of comments, then a question for you.

When you say how proud and privileged you are as a member of a union where your rights are respected, I've shared that feeling and shared that pride. I think it's important during these hearings to recognize that it's the labour movement that not only brought those rights originally into collective agreements, but that as a result of them being in collective agreements we had legislation that reflected more appropriately what those minimum rights ought to be.

I think you do a great service to the legacy of the earlier leaders when you go on to talk about how the act attacks the most vulnerable. You're not sitting there worrying only about yourself; you're making sure you use whatever clout you have in your union to speak for those who are being hit by this government in this way.

Women workers were the first example you gave of the caucus and our party have talked consistently about the fact that women are disproportionately hit by this government's agenda. Examples are the 22% cut to the people in Ontario, the gutting of programs for battered women, the gutting of the pay equity program. It goes on and on. You talked about the garment workers. The submissions we heard in Toronto would bring tears to your eyes when you listen to the circumstances of the sweatshops that mostly women are working in in this province, in this day and age. I think it says a lot about you, your union and other unions that don't have this but are coming out to show that leadership.

You've had experience not only as a senior leader in your own right but as someone who's experienced discrimination in a workplace where you didn't have a union. We still have members of this government who are people in the business community who don't believe in the existence of the union. They think that's some kind of rhetoric we're using. Would you, in your own words, just explain a bit about what it's like in those environments?

Mr Reid: Ministry of Labour statistics will point out that one in three employers violates the act. The restaurant industry is a perfect example of mostly women workers being exploited. The Screaming Tale incident

one. In this community of London, in some very upscale restaurants, the owner of the restaurant collects 30% of the tips that the waitresses collect. They pay minimum wage, but they charge for breakage. A lot of times when I've got a customer who just does the old dine-and-dash and runs out the door, the waitress is on the hook for the check. The breakage and the runaway customer — it's clearly illegal to collect money from the worker. But when she tries to enforce her rights under the law, she's disciplined, and not only disciplined, but most times she's fired. I know personally of my sister; this has happened to her.

What happens is, when you're fired from one place and you go to get another job in that same industry, in the same community, your chances of getting a job are minimal. I have the fortune to work in a larger community with a lot of workers, and maybe we have a little bit of mobility of labour. But what happens when you make a complaint to the employment standards branch when you work in a small town like Exeter or Wingham or Clinton and, all of a sudden, the whole town knows that you made a complaint to the Ministry of Labour? Do you think you're going to get a job for enforcing your minimum rights? Not very likely.

Mr Ouellette: Thank you very much for your presentation. I come from a town that's mostly occupied by CAW workers. During your contract negotiations for the government contract did you not enter into special agreements for that contract with the government? Were there not concessions?

Mr Reid: Which government?

Mr Ouellette: That was for the military.

Mr Reid: You're talking about GM Diesel?

Mr Ouellette: Yes.

Mr Reid: As far as hours of work are concerned? Can you elaborate on what your information is?

Mr Ouellette: I understand, or at least the local members tell me, that there was a considerable number of concessions or negotiations that your local made with it.

Mr Reid: I wasn't party to those negotiations and I have no knowledge of those negotiations, but I can tell you that a lot of what you're alluding to is probably overtime hours, workers working beyond the 48 hours. I know of workers in my local union at that facility who are working seven days a week. For a long time there were workers working seven days a week, for almost 18 months at a stretch.

Mr Ouellette: Do you think they should be allowed to do that?

Mr Reid: No, I don't. I quite honestly don't. Personally I do not agree with that and as a representative of the union I do not agree with that. But that's a huge debate within the local.

What I strongly disagree with is the mandatory aspect of overtime. It does not create jobs. It does not tell the employer, "I have this work that needs to be done, so I'll hire and train some workers." What it does is it says, "Take your existing workforce and work them into the ground," and Brian Daley from Local 88 spoke quite eloquently to that, on what the effects are. We see it in our local. We see it with an increase in alcoholism; we see it in an increase in family abuse, in spousal abuse.

Mr Ouellette: You said the local here set a dangerous precedent where the people doing the negotiations for them may be allowing for the same in their local bargaining and there's strong concern from the membership in those areas. So it's quite conflicting —

Mr Reid: If you're talking about overtime, I think the position of most workers is, "If I feel I can fit 56 hours or 60 hours of overtime into my life" — and I don't know how people can do that — "then yes, I should be given the freedom and the right and the opportunity to do that." But if I am a worker who is concerned about my community, my family, my own personal wellbeing and consider 40 hours a week enough, or even a little bit more than enough when I look at the overall community and when I look at an overall unemployment rate in this province of over 15% — the real unemployment rate, not the government's statistics.

Mr Ouellette: Is that not what you negotiate for, for the security to make sure that those options are available so that those who want to work in the union have the ability to work as much overtime as they want, and that those who don't can't?

Mr Reid: If you're talking about General Motors Diesel, what that corporation is doing and what that corporation has done is lobbied this government, has lobbied the minister for a mandatory 10-hour day, for a mandatory 56-hour week, that they would exercise at their whim, that would take away the negotiated —

The Chair: Sorry, Mr Ouellette. We've gone a couple of minutes over here. Sorry to cut you off, both of you, but thank you very much for coming and making a presentation this afternoon.

CANADIAN AUTO WORKERS, LOCAL 1859

The Chair: That takes us up to Canadian Auto Workers, Local 1859. Good afternoon. We have 20 minutes for you to use, divided between the presentation time or questions and answers.

Ms Deb Tveit: Thank you. I am Debbie Tveit from Local 1859 in Tillsonburg. I have been asked to submit this brief. I was just asked to submit it yesterday, so I am kind of a stand-in for the president, who is Ron Roberts.

In introducing the Bill 49 amendments on May 13, Labour Minister Elizabeth Witmer claimed she was making housekeeping amendments to the Employment Standards Act. She also described it as "facilitating administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures."

The truth the way we see it is that minor technical amendments contain substantive changes, changes which clearly benefit employers and diminish access to justice for both the organized and unorganized, and particularly the most vulnerable in our workforce. These changes will make it easier for employers to cheat the employees and harder for workers to enforce their rights. It strips unionized workers of the historic floor of rights that they have had under Ontario law for decades.

This submission is made on behalf of CAW Local 1859. We're located in Tillsonburg and we represent 1,300 workers in the Tillsonburg, Delhi and Simcoe area. All of our workers work for private industry, so we don't have public service in our unit, but all of their lives are

affected by public service because all of them have members in their family who work in some form of the public service. Certainly they're concerned with the whole amendment process.

Just to start with the flexible standards, we understand that this has been withdrawn but is to be reviewed later, so we'd like to still be able to comment on this section. This contains a fundamental change to the Ontario labour law and it permits the parties to contract out minimum standards. This is what really worries us. Prior to this it was illegal for collective bargaining to have provisions below minimum standards, so it made it a lot easier for bargaining units because there was a floor. It's going to be a lot more difficult, especially for an amalgamated local like us. Now we have six different bargaining units, so it becomes very difficult when you don't even have a minimum standard for them to work up from.

1700

It also allows the override of legal minimum standards of severance pay, overtime, public holidays, hours of work and vacation pay if the contract confers greater rights when those matters are assessed together. This is scary language to us, because this measure erases the historic concept of an overall minimum standard of workplace rights for unionized workers. Employers are free now, for example, to disregard that floor and to have the opportunity to trade off provisions such as overtime pay, public holidays, vacation pay and severance pay in exchange for increased hours of work. That is a really scary measure.

How one is to measure whether or not a tradeoff of this kind confers greater rights is left unstated. I think that will become an issue in its own right, how you figure out if that is a conferring greater rights. Just to give you an example, a retail owner could ask an employee to cover all hours of the store's operation, 50 to 60 hours a week, and not pay overtime after the legalized 44 hours. The employer could argue that due to the inclusion of an extra week of vacation, three weeks rather than two, this would confer greater rights when assessed together.

This scares us because we have women working in our local who can't even take their two weeks' holidays because they can't afford it because they're making \$10 an hour. Quite frankly, they can't take two weeks' vacation on \$10 an hour. When you're trying to feed three children and save up enough money for a vacation, it becomes impossible. I can't see how someone working for 50 or 60 hours a week is going to benefit from an extra week's vacation that they probably can't take anyway. So this really scares us.

In short, the parties are being asked to value and compare non-monetary rights—which is hours of work—with purely monetary rights—vacation pay, public holidays etc. Given the inequality of power between employers and employees, including many who are unionized in my own local, circumstances in which detrimental tradeoffs are agreed to despite the measurement problems referred to can easily be envisioned. We can easily see that this is going to be a big problem, not only for people who are unionized but also for some very vulnerable unionized workers. Being unionized doesn't mean you automatically make \$24 an hour; I can guarantee you that, coming from our local.

This proposed amendment, therefore, allows employers to put more issues on the bargaining table which formerly part of the floor of legislated rights. Now we have to bargain almost the whole Employment Standards Act to begin with just to get yourself a floor. It will make settlements more difficult, particularly for newly organized units and small service and retail workforces. It will enable employers to roll back long-established fundamental entitlements, such as hours of work, the minimum weeks of vacation, severance pay, statutory holiday pay, etc. comparing these takeaways to other, unrelated benefits which together can be argued to exceed the minimum standards. This is what really scares us.

The potential of this amendment alone to erode people's standard of living should be enough to make the drafters of the amendments rethink, if not radically, Bill 49. It's certainly enough to make Local 1859 in opposition to the bill as a whole.

If it's viewed another way, if a central goal of the industrial relations system has been to facilitate negotiated settlements, this amendment runs counter to that end. It will make settlements more difficult. It will result in bitter relationships and industrial conflict, so certainly we can see some hard bargaining to be done. We certainly see conflicts end up in a strike situation in order to just win simple, historic rights that always had.

We're seeing that. We are seeing contracts being challenged in our locals for things that are quite so and at the bargaining table where there was quite a relationship over what it meant, and then they're trying to instill it in a different way and it's just not working through the grievance procedure.

What were in the past minimum benefits protected by law will now become permissible subjects for bargaining units, and employees do not have sufficient bargaining strength to resist employers' demands. It'll indirectly impact on the standard of living and working conditions of all Ontarians. Certainly the short-sighted may see a rush to the bottom as helping employers be competitive but the more sane would question whether it makes for higher productivity, better workplace relations, increased consumer purchases or an improved quality of life in Canada's most industrious and populous province. The real question is what is the end result of this, because people aren't working and aren't making a decent living in Ontario, how is Ontario's economy going to prosper? We really question that and wonder what the end result is.

On to the next one, enforcement under a collective agreement: Currently, unionized employees have access to the considerable investigative powers of the Ministry of Labour. This inexpensive and relatively expeditious method of proceeding has proved useful, particularly in situations of workplace closures and with issues such as severance and termination pay. Bill 49 changes eliminating recourse by unionized employees to this avenue, and instead require all unionized workers to go through the grievance procedure and to enforce their legal rights through the law.

What we see is we're bearing the burden of investigation, of enforcement and the accompanying costs of that. The director can make an exception and allow a complaint under the act where he thinks it's appropriate.

but for all practical purposes the enforcement of public legislation has become privatized. That's the way we see it, that now it's up to us to enforce decades of minimum standards and decades of help getting that enforced.

Certainly I have to agree with some of the speakers before me that what we need is education. A prime example is, my daughter works in a bakery and for two years she was never paid her statutory holidays. The employer had no idea that she had to be paid those. The employer wasn't trying to be nasty about it; she had no idea she was supposed to be paying her. The employers don't know what they're supposed to be doing, let alone the employees, so education certainly needs to happen.

Under this bill, union members would not be allowed to use the Ministry of Labour's enforcement procedures. Instead, their unions would be required to bear the cost of complaints for violations of legislated minimum standards. Any worker who asks the Ministry of Labour to enforce the law would be prohibited from going to court in the same case. Similarly, anyone who files a civil suit would be barred from filing an employment standards claim. By cutting down the number of claims, we see the government as paving the way for chopping 45 enforcement jobs in the Ministry of Labour, and we don't believe that should be done. We don't believe that's the proper way to go and we certainly see that as detrimental to Ontario as a whole.

Arbitrators will now have jurisdiction and make rulings that were formerly in the purview of an employment standards officer, an ESO, a referee or an adjudicator. They will not be limited by the maximum or minimum amounts of the act; however, arbitrators lack the investigative capacity of the ESOs and may not be able to match the consistency of result that the act has had under public enforcement. Most important, employers could argue that boards of arbitration do not have the critical powers to investigate whether particular activities or schemes were intended to defeat the intent and purposes of the act and its regulations and such cannot be determined.

In such circumstances, unionized employees could well be left with no recourse whatsoever. This is particularly evident in cases of related employer or successor provisions of the act. It's difficult to see how such provisions can be applied when the successor or related employer may well not be party to the arbitration process.

The enforcement for non-unionized employees really worries us. At least every family in our local has a non-unionized employee of some form. It becomes very hard for us to ignore, and we don't ignore, the fact that non-unionized employees need help with this act, and we have helped them with the act, trying to explain it, trying to let them know what their rights are. They've come to our local for help, not to me specifically, but we have a person who handles those cases, and certainly, they've been well used over the years.

With these amendments, the Ministry of Labour is proposing to end any enforcement in situations where it considers violations may be resolved by other means, namely, the courts.

1710

In other words, the amendments would download responsibility for the enforcement of minimum standards

for non-unionized workers. Employees would be forced to choose between making a complaint to the employment standards branch or filing a civil suit in the courts. Responsibility for enforcement is also downloaded on to non-unionized employees by limiting the amount recoverable through employment standards to under \$10,000. Currently there's no limit on what's recoverable. What an employer owes an employee is generally what he has to pay, so an employee who files a claim at the Ministry of Labour for severance and termination pay is precluded from bringing a civil action concerning wrongful dismissal and claiming pay in lieu of notice, which exceeds the statutory minimums.

The effect of these amendments is that those employees who have chosen the more expedient and cost-efficient path of claiming through the ministry will have to forgo any attempt to obtain additional compensation through the court. Legal proceedings are notoriously lengthy and expensive for many, even though they may be entitled in common law to more than the statutory minimum under the ESA.

An employee who seeks to obtain a remedy in excess of \$10,000 and who can afford to wait the several years a civil case will take, and at the same time pay for a lawyer, will have to forgo the relatively more efficient statutory machinery in respect for even those amounts clearly within the purview of an employment standards office.

Employees who file a complaint under the act will have only two weeks to decide whether to continue under the act or withdraw their complaint and pursue a civil remedy. Those unaware of their legal rights may well be excluded from commencing a civil action unless they obtain the necessary legal advice within the short two-week period.

Just as the provisions barring civil remedies in section 64.3, there are mirror provisions in section 64.4 precluding an employee who starts a civil action for wrongful dismissal from claiming severance or termination payments under the act. Other provisions are also prohibited under the act once a civil action has started, such as an employer not paying wages owed, failure to comply with the successor rights in the contract service sector etc.

Employees who initiate a claim but decide they no longer wish to pursue their civil suit don't appear to have even the two-week time limit to change their mind; rather, they appear to have no right to reinstitute a complaint under the act.

The next section is the maximum claims. The amendments introduced as noted above, a new statutory maximum amount that an employee may recover by filing a complaint under the act, this maximum of \$10,000 would appear to apply to amounts owing of back wages and other moneys such as vacation, severance and termination pay. There are only a few exceptions such as for orders awarding wages in respect of violations of the pregnancy and parental leave provisions and unlawful reprisals under the act.

The problem with implementing such a cap is that workers are often owed more than \$10,000 even in the most poorly paid sectors of the workforce such as food-services, garment workers, domestics and others. Indeed,

workers who have been deprived of wages for a lengthy period of time are the very employees who will not have the means to hire a lawyer and wait the several years that it takes before their case is settled. In effect, therefore, this provision will encourage the worst employers to violate the most basic standards while at the same time compounding the problems for those employees with meagre resources.

Bill 49 also gives the minister the right to set out a minimum amount for a claim through regulation. Workers who make a claim below the minimum, which is as yet unknown, will be denied the right to file a complaint or have an investigation. Depending upon the amount of this minimum, it could well have the effect of employers keeping their violations under the minimum in any six-month period and thereby avoiding any legal penalty.

The use of private collectors really scares us because we've seen this happen in non-unionized workplaces already. The proposed amendments intend to privatize the collection function of the Ministry of Labour's employment practices branch. This is an important change, providing one of the first looks at the government's actual privatization of a task which has traditionally been a public task. Private operators will, should these proposals be implemented, have the power to collect amounts owing under the act.

A fundamental problem with regard to the act has for some time now been the failure to enforce standards. This is no less true with regard to collections. The most frequent reason for the ministry's failure to collect wages assessed against employers has been the employers' refusal to pay. The answer to this problem according to the proposed amendments is not to start enforcing the act but rather to absolve the government of the responsibility to enforce the act by farming out the problem to a collection agency. In addition, the employment standards directors can authorize the private collector to charge a fee from persons who owe them money. Should the amount of money collected be less than the amount owing the employee or employees, the regulations will enable the apportioning amount to go to the collector. The employee or employees will have to actually pay the collector for getting their money. It just amazes me.

So where the settlement is under 75% of the amount owing, the collector is required to obtain the approval of the director, but this will still allow collectors incredible leeway and it will create outright abuse with someone else's money. That's what's going to happen. The danger here is that a person whose earnings put them below the poverty line and who is owed money under the act could well be required to pay fees to the collector. A minimum-wage earner at \$6.85 per hour, for example, could not only receive less money than owed but also have to pay for it to be collected.

The Chair: Excuse me, Ms Tveit. We're already passed our 20 minutes. If you care to pick sort of the highlights — I see you have quite a bit left to cover.

Ms Tveit: Yes, I still have some.

The Chair: If you could wrap up in the next minute or two, please.

Ms Tveit: Okay. I'll just skim through the rest. CAW, our local, is gravely concerned that employees, particular-

ly the most vulnerable, will be pressured to agree settlements less than the full amount owing them just based on making it hurry up, that's all; just based on the fact that they want it to hurry up and get over with, so they're going to settle for less just to do that. Certainly that will give employers a real boost to have someone who wants to settle, and give them less.

On the limitations, I'm just going to let you read this. We're really against the whole limitation process, seems to be a long process at best now, and so to limit is only going to make it worse. Certainly people deserve back pay for longer than just six months from the date they complain. Sometimes suits take two or three years and that's really not going to be very effective or very helpful.

We just mention that there are a few minor positive amendments that we like. Two that we note are section of the bill and section 28 of the bill. One is the entitlement of vacation pay: vacation pay is entitled; you're entitled to two weeks per year; it will occur whether or not the employee actively worked or was absent due to an illness. So we do agree that is good.

Also, the seniority and service during pregnancy and prenatal part, we agree that should be, and certainly for women. That's usually the people that hits. Just because through procreation we happen to be the ones who have to miss work, we shouldn't be penalized for this. We do agree that's good.

I'll just conclude. As our comments on the key amendments of Bill 49 indicate, no one concerned with maintaining basic societal standards in terms of hours of work, overtime pay, vacation pay, severance and public holiday can possibly favour these amendments. Bill 49 would eliminate the floor of minimum standards.

As for the unorganized, particularly the most vulnerable in the workforce, Bill 49 is about the race to the bottom. It's about undermining their already precarious existence and as such is totally unacceptable.

As noted in our introduction, these amendments come on the eve of a comprehensive review of the act. The proper procedure would have been to include such changes as part of such a review and not try to pass them off as housekeeping changes. But beyond this, the core of the problem is the nature of the amendments themselves as our comments already make clear. Standards shouldn't be eroded, shouldn't be made negotiable. Rights shouldn't be contracted out and privatized. All this is taking place as part of the overall Harris agenda to shrink the size of government and divest itself of public services. The bottom line means slashing \$10 billion from Ontario's budget in order to pay for the tax break for the wealthy.

We respectfully submit this from Local 1859.

The Chair: Thank you very much for your submission.

ST THOMAS AND DISTRICT LABOUR COUNCIL

The Chair: That leads us to the last presentation of the afternoon, the St Thomas and District Labour Council. Good afternoon. We have 20 minutes for you to divide as you see fit.

Mr Jim Nugent: Thank you very much. I'd just like to say that I saw it was in the papers Monday that the

minister has withdrawn one of the amendments, to re-establish it some time in the future. It seems it's a reversal from Bill 7 where at the last minute she introduced amendments to the act. It certainly doesn't give one an air of confidence in the Ministry of Labour in Ontario.

This submission is made on behalf of the St Thomas and District Labour Council, located in the city of St Thomas in the county of Elgin. The St Thomas and District Labour Council represents approximately 4,500 members who are employed in various industries such as manufacturing of cars, suppliers of parts for cars, hospitals, nursing homes, city hall, schools, just to name a few.

The proposed amendments that Labour Minister Elizabeth Witmer is introducing in Bill 49 will create situations where employers can cheat their employees. It will also take away from unionized workers minimum rights they had under the previous Employment Standards Act.

Section 3 of the bill changes the present law by allowing the parties to contract out minimum standards. Prior to this amendment in Bill 49, a collective agreement could not contain anything that was under the minimum standards as set out in the Employment Standards Act. This would include such things as, as everybody knows, public holidays, severance pay, vacation pay, overtime, hours of work etc. Bill 49 now changes this if the collective agreement confers greater rights when those matters are assessed together. That, to me, is a sham.

This proposed amendment takes away from unionized workers minimum rights that have been in place in the Employment Standards Act for years. It will give employers a whole new arsenal of weapons come contract negotiations with their employees. It will open up an avenue in negotiations which has never been there before, and the St Thomas and District Labour Council believes that this can only lead to confrontation at the bargaining table between employers and employees. If the above is what can happen between employers and unionized employees, then we can imagine what will happen between employers and non-unionized employees.

To think what this amendment by itself can do to the lives of workers in the province of Ontario should tell this committee that its recommendation to the Minister of Labour is to drop it immediately. The St Thomas and District Labour Council stands in very strong opposition to this part of the bill.

If the government of Ontario and employers in this province see this as helping them to become more competitive by taking away the dignity of working people by the erosion of the minimum standards, then they must surely live in dreamland because this can only lead to one thing, and that is confrontation between employers and employees.

Under the present Employment Standards Act, unionized employees have access to investigation and enforcement powers of the Ministry of Labour. This has been very helpful to them in such instances as termination pay, severance pay and workplace closures.

Under section 20 of the bill, this avenue would be eliminated and in its place they would have to use the

grievance procedure under their collective agreement to enforce their rights. This in turn would have the union bear the cost of the investigation and its enforcement. Let's examine this for a minute.

Suppose, for instance, an employee has a complaint about severance pay. Prior to this proposed amendment — and this is the way it works in the real world when you're in the unionized factories — an employee would consult with his union as to why the severance was not paid. Questions would be asked by the union to the employer as to why the severance was not paid. If the answer was not satisfactory, then the employee would be advised by the union to contact an employment standards officer. He or she would do an investigation — this is the employment standards officer — of the complaint and make a ruling one way or another as per the evidence they obtain through the investigation, and this has happened in numerous cases that I have dealt with.

The point I make is that this is a very easy process for anybody to understand and do. Also, in most of these cases the employee would have an answer in approximately four to six weeks.

Taking the same scenario, let's now look at what happens under the proposed amendment. The employee goes to the union to ask about his or her severance pay. The union would then approach management and ask them why the employee was not receiving severance pay. Let's assume we have to file a grievance. Going through a grievance procedure could take two to three to four months in this particular case, depending on the evidence we've got to get and the investigation and so forth.

If at the end of the grievance procedure the answer is still that the employee will not receive severance pay, then we have to proceed to arbitration. This means in a lot of cases the union would employ a lawyer to handle this case before an arbitrator. It would have to wait until an arbitrator is selected or appointed. A suitable date would have to be agreed upon and then it would have to be determined as to how many days of hearings would be needed. This process, from the time the grievance was filed to a decision by the arbitrator, could take a year until the employee could get a decision on his claim. Ladies and gentlemen, that's real life. That's real life in arbitration when you're looking at it.

It is quite obvious as to the time differential for a decision to be made between the two processes I've just mentioned.

There are some other aspects a union could face because of this proposed amendment. Let's say a union decides not to file a grievance or that they file a grievance but do not take it to arbitration. They then could face a charge by the employee of failing to represent. This could lead to a case before the Ontario Labour Relations Board dealing with a failure to represent an employee due to a complaint under the Employment Standards Act, which unions have never been charged with before.

We in the St Thomas and District Labour Council view this as another step by the minister to take away rights of unionized workers which have been there under the Employment Standards Act for years.

In sections 19 and 21 of the bill, again we look at another takeaway by the minister. This is where a non-

unionized worker would have to choose between filing a complaint to the employment standards branch or filing a civil suit in court. If he files with the employment standards branch, the amount that he or she can recover is limited to \$10,000. If he or she is owed more, tough luck, or else you hire a lawyer and take it through a civil suit. What these amendments will do is allow any employer — I repeat, any employer — the right to ignore the minimum standards as set out in the previous Employment Standards Act.

Under section 28 of the proposed amendment, the minister is allowing the government to privatize a task which has been done by the public service. The fact is that the Ministry of Labour is notoriously weak at collecting moneys owed to employees from employers. It seems that instead of the ministry enforcing the act to collect these moneys owing, the minister simply contracts this task out to private collection agencies.

It seems to me that the collection agencies will have the power to encourage settlements between workers and their employers. As a result of this, one can only see workers losing money as collection agencies push for quicker settlements and also quicker payment of their own accounts. The St Thomas and District Labour Council is very concerned that with this amendment employees will be pressured into agreeing to lesser settlements and letting employers continue to violate the minimum standards. There is also no guarantee that contracting out collections to the private sector will be a less expensive and more effective mechanism.

1730

There are some amendments in the bill that the St Thomas and District Labour Council can support; that is, that the entitlement of the two weeks per year will accrue whether or not the employee is actively employed all of this period or was absent due to illness or a leave. Another one of note is that the employees will be credited with benefits and seniority while on pregnancy and parental leave.

In conclusion, the St Thomas and District Labour Council implores this committee to go back to the Ministry of Labour and strongly recommend that these amendments to the Employment Standards Act be dropped. This submission is respectfully submitted. My name is Jim Nugent. I'm the president of the St Thomas and District Labour Council.

The Chair: That leaves us two and a half minutes per caucus. I believe this time it starts with the official opposition: Ms Boyd. Sorry. Forgive me.

Mr Baird: We think of you sometimes as the official opposition, in spirit.

Mrs Boyd: Yes, I can understand why.

Thank you, Jim, for your presentation, and particularly for taking us through what it means from a union perspective to go through that grievance and arbitration position. One thing that you haven't said and that many of our presenters haven't talked about is the whole issue of the investigation part of all of this, because of course under the Employment Standards Act, the employment standards officer had the right to look at records. Under your grievance procedure I assume that disclosure is going to be an extraordinarily difficult situation. Could you tell me a little bit about that?

Mr Nugent: As I explained in the submission, with an employee would ask for anything in regard to the Employment Standards Act, it was always the thing that the employee would contact, after there was no agreement with a company or so forth, the employment standards officer. If we're looking at vacation pay or termination severance pay, then we have to look at records of the employer to determine the amount of moneys owed that employee. Through the ministry, this was an easy process, because the employer simply didn't refuse to give the ministry anything in the vast majority of cases. So it was a simple process. In any of the plants, all kinds of figures were usually prepared for them and a judgment could be made one way or another at that time as to whether the person was owed and, if so, how much they were owed.

If we're going to a grievance procedure and I say to a company, "Produce the records of this employee," they tell me that's the company's records. That's not the union's records; that's the company's records. So it could lead to time and time where we have to file grievances, get the records, to get arbitrators, to make arbitrators rule that we can get records. Meanwhile, the only person being hurt in this is the employee who is standing out on the street or something, who hasn't got any money and who is owed money through the law. That's what happens.

Mrs Boyd: That was certainly my impression, that inability, through this process suggested, to actually get at those records in any kind of timely fashion is actually one of the biggest impediments to it. I assume the other part of it is the cost scenario for unions, obviously, but also the employer, in terms of the grievance process. That makes it a very costly process. And if you're not unionized, the costly process of going through the civil court is really prohibitive for virtually anybody, is it not?

Mr Nugent: The cost to unions — and companies too. I've got to say that; the companies use lawyers too — for the court and the arbitrator, an approximate cost for a one-day hearing could be \$7,000 or \$8,000. That's paying your lawyer and the company paying their lawyer and both of you paying the arbitrator. And let me tell you, we don't see too many one-day hearings now. We just did a case which was seven days of hearings. We expect to get a bill in the region of \$30,000 for that hearing. That was for a termination — and we'll win it, by the way.

Mr Baird: Thank you very much for the presentation. I read it as you presented. On page 5 you deal with the collection agencies issue. I read, "As a result of this, one can only see workers losing money as collection agencies push for quicker settlements and also quicker payment of their own accounts."

That's something that actually goes on now within the employment standards branch. That's not something that's going to be new or unique. The last year we have statistics available for was 1994-95, before the last election. Between \$3.8 million and \$5.2 million of the \$16 million that was collected was less the amount that the employee was owed. I believe they should be entitled to 100% and we should do everything possible to assume 100%.

There are some instances, your 24%-odd, where there's bankruptcy or an insolvency involved. I think workers should get a higher priority than they do now. I know the minister feels very strongly on this and has been in contact with a federal minister to have the federal Bankruptcy Act amended to reflect that greater priority. One of the presenters who presented in Toronto or Hamilton mentioned that workers were actually the ones who had to physically earn that money and that they should be given a much higher priority than they are now. That's certainly something we've been pushing for, as has the minister, but that's something that's not new.

I guess what we feel with respect to collections is that the employment standards officers weren't experts at collections. We've talked to some folks in the collections business, some with maybe 25 or 35 years' experience in the collection business, and it certainly is our hope that they could bring that experience to the benefit of the worker to deliver more money at the end of the day into the worker's pocket. Certainly our goal has got to be 100%, and I don't think we can be satisfied at all unless we're at 100% — obviously when you set aside the issue of insolvencies and bankruptcies, which we hope to pursue, the changes to the federal statute.

Mr Nugent: Doesn't your bill then say something in the region of 75%? If you claim the bill should be 100%, then you should put that in as 100%, not 75%. If the minister is saying in her mind, "Yes, we need 100% for that worker out there," then why any reference to 75%? Make it the 100%, make it the collection agency and make the damned employer pay for the collection agency.

Mr Baird: We are, in this legislation. That's in the legislation. We are. But if Bob Mackenzie and the NDP government were settling at \$5 million less to workers, which is approximately a third less than what they were entitled to of the \$16 million they claimed, I would suspect that they were doing the best job they could do for workers, that they weren't delinquent in their responsibilities. We want to see 100% of the money delivered 100% of the time. That's got to be the goal.

But I can tell you that at the Ministry of Labour we're not satisfied with recovering 25 cents on the dollar now. I doubt when this bill passes that we will go from 25 cents to the full dollar in the first week or the first month that we're there, but that's got to be our goal and we've got to do a lot more. The way we're doing it now simply isn't working.

On the resource question, the previous government laid off 10 people in the collections branch and two years later they're still collecting 25 cents on the dollar. So if more people were the way to do it, the money would have gone down. I am of the belief that we'll see more money going into the workers' pockets and we will be held accountable for that with our colleagues on this side of the aisle.

Mr Lalonde: First of all, I wanted to congratulate you for a well-presented brief. I could say that I recognize your concerns and I would be very nervous if I were in your shoes or in the shoes of an unorganized or even organized labour group.

I think a lot of the points that were brought to our attention today should be taken into consideration by the government, especially at a time when we are saying we should be looking at creating 725,000 jobs. The fact that we're looking at extending the regulated hours will not only affect the standard of living of the workers; I think it would eliminate some jobs because it's really just the opposite of what the labour groups are going after at the present time. They're trying to reduce the number of hours to create additional jobs. In this case, we will allow the employers to increase the regulated hours.

I just hope the government will be taking into consideration some of the points that were brought to our attention today, and I would like to thank you very much for your presentation.

The Chair: Thank you on behalf of the committee for appearing before us and making your presentation.

With that, committee members, just one minor house-keeping detail. Earlier today we had a presentation from Miss Susan Smith, and Mr Shea made reference to a submission that Miss Smith has handed to the clerk. However, she'd like it to be considered as an official exhibit or an amendment to the Hansard. Hansard couldn't be corrected itself because both Mr Baird had referred to it and I believe Mr Hoy also made reference to the original presentation. So I'll just read into the record the full text of the submission, addressed to the clerk of the committee:

"Mr Arnott,

"I would like to correct on the record of my oral presentation that I misspoke when I responded to a question of parliamentary assistant Mr Baird about my recommendation for the hourly minimum wage.

"I believe I responded, 'nine dollars and seventy-five cents an hour.' I believe Mr Baird rounded it up to \$9.80 per hour.

"For the record, the figure I recommend for the hourly minimum wage is 'nineteen dollars and eighty cents an hour,' that is \$19.80.

"Thank you for your attention to this detail.

"Susan Smith."

That will now be included in Hansard in that form.

With that, that concludes our hearings here in London. Our thanks to all those who took the time to make presentations or to listen in.

The committee stands recessed until 9 o'clock tomorrow morning in Windsor.

The committee adjourned at 1740.

CONTENTS

Thursday 22 August 1996

Employment Standards Improvement Act, 1996, Bill 49, Mrs Witmer / Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, M^{me} Witmer	R-1015
London and District Labour Council	R-1015
London Chamber of Commerce	R-1018
American Federation of Grain Millers, Local 154	R-1021
London and District Construction Association	R-1024
Life*Spin	R-1025
All Canada Collect	R-1029
Oxford Regional Labour Council	R-1032
London Hotel and Motel Association	R-1035
Canadian Union of Public Employees, London and district council	R-1037
London Regional Advocates Group	R-1040
Susan Smith	R-1042
Lazarus Community Action Coalition	R-1045
Chatham and District Labour Council	R-1048
United Steelworkers of America, southwestern Ontario area council	R-1051
Michael Klug; Donna Hogg	R-1054
Canadian Union of Postal Workers, Ontario regional office	R-1058
London and District Service Workers' Union, Local 220	R-1061
Canadian Auto Workers, Local 88	R-1064
Canadian Auto Workers, Local 27	R-1066
Canadian Auto Workers, Local 1859	R-1069
St Thomas and District Labour Council	R-1072

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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 *Mr Jerry J. Ouellette (Oshawa PC)
 *Mr Joseph N. Tascona (Simcoe Centre PC)
 *In attendance / présents

Substitutions present / Membres remplaçants présents:
 Mr John R. O'Toole (Durham East / -Est PC) for Mr Carroll
 Mr Derwyn Shea (High Park-Swansea PC) for Mr Maves

Also taking part / Autres participants et participantes:
 Mrs Marion Boyd (London Centre / -Centre ND)

Clerk / Greffier: Mr Douglas Arnott
Staff / Personnel: Mr Ray McLellan, research officer, Legislative Research Service



R-24

R-24

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of Ontario**

First Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Friday 23 August 1996

**Journal
des débats
(Hansard)**

Vendredi 23 août 1996

**Standing committee on
resources development**



**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Friday 23 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Vendredi 23 août 1996

The committee met at 0901 in the Hilton Hotel, Windsor.

EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): Good morning, all. Welcome to the fifth day of hearings on Bill 49. We're pleased to be in Windsor today and look forward to hearing a number of deputations. Let's proceed right away with our first group, the National Automobile, Aerospace, Transportation and General Workers Union of Canada — CAW Canada. Good morning, gentlemen.

Mr Gerry Bastien: Gerry Bastien, area director of the CAW. The presentation we have on behalf of the CAW is going to be made by myself and Mickey Bertrand, but we'd ask the indulgence of the Chair and the committee members that we have a special occasion. We've had an occupation of the Ministry of Labour offices and there are three member citizens who occupied the office sitting here. We would be willing to put our presentation back 15 minutes and let them go first. I think it would be the wish of the majority of the people here that these three people be heard.

The Chair: The only vacancy we have this morning is at 11:45. If the subcommittee would like to —

Mr David Christopherson (Hamilton Centre): Mr Chair, in light of the news that we've just had, as a member of the committee I would move that we move everyone back the 15 minutes that's been requested and allow this group to be heard. The majority of the presenters here today are people from the community, from the labour movement, from those who are concerned about the rights that are being taken away as a result of Bill 49. I've spoken to them and they're all in agreement that they would support such an adjustment to the agenda. I would so move.

Mr John R. Baird (Nepean): Given that we've agreed to hear everyone and there are a few empty time slots, I think one this morning and a few at the end of the day, I have no objection.

The Chair: No objections. Any other comments?

Mr Christopherson: My motion is that they be heard now.

The Chair: Thank you, Mr Christopherson. I just asked if there were any further comments.

Mr Christopherson: What's your problem?

The Chair: I don't need any editorial comments.

Any further comments? Seeing none, I put the question: All those in favour that we amend the schedule by moving everyone else back by 15 minutes this morning? So approved.

Accordingly, you would like the other group to have the first 15 minutes? That's fine.

CHIP LeMay

GREG CARROLL

LORA LOGAN

Mr Chip LeMay: Hi. My name is Chip LeMay. I participated in the Ministry of Labour occupation last night, just for one simple reason: I'm a little ticked off at the government that's in power right now. My reason for participating is that no one ever wants to hear us. I decided to participate because I had something to say.

All the cuts to the Employment Standards Act are going to affect myself and my fellow workers in the retail service industry. We as workers rely on the minimum standards set forth in the Employment Standards Act, which is now under the Tory knife. With the Tories in power in this province, we will never have the chance to experience the same good life as our parents and grandparents did, because the Tory government is taking back everything they worked their buns off for. Where I work, we're a newly organized workplace under the CAW, and it's Local 195. Under the new Tory legislation, many used and abused workers may never have the same privilege of becoming a union member, as I have, for some kind of protection. In the province of Ontario, which the Tories want us to be so proud of, you big shots don't give a damn about us. We're the working men and women. The only people they really give a damn about are the corporate élite and all your rich friends, when in reality there wouldn't be any of the corporate élite and rich friends if it wasn't for us, the working people.

Every day, you put more injured workers out on the street. Every day, corporate and government downsizing is putting more people out on the street. Companies are cutting their pensions. Canada pension — where is that going? If I get hurt on the job, too bad for me; I'm out on the street. Where's our education system going? If you're fortunate enough to qualify for a good education, can you find anything but a minimum-standard \$7-an-hour job, in which the already too low minimum standards are soon to be lowered even further?

As far as I'm concerned, I want the cuts to stop and, along with many other working people in this province, am ready to fight for a victory by any means necessary.

Mr Greg Carroll: My name's Greg Carroll and I'm a 19-year-old student. I would like to tell Mike Harris I'm sick of him, his government and the cutbacks. I have been going to school to achieve a good education, to discover when I graduate there will be barely any jobs available, most being minimum wage, part-time, few benefits and few opportunities. If I wish to continue my education, how will I pay for it while working under these minimal standards? As I was going through school, I thought Ontario was a great place to live, but now I'm disgraced by the Tory government that is running our province.

The UN survey shows that Canada, and Ontario in particular, is the main choice to live and find a better future in. After this government is done, they will be asking the people of Ontario where they would rather live. It feels that Ontario is becoming a Third World province.

As I was occupying the Ministry of Labour building last night, I had the pleasure of meeting Lyle, a 77-year-old man who has been fighting all these years for our standards of living today. This government has not only turned its back on Lyle and his generation, but ours as well. It is time the government listens to us, because it is our future they are ruining.

Ms Lora Logan: Good morning. My name is Lora Logan. I am here as a 16-year-old high school student to tell Harris that I'm fed up with his cuts to welfare, child care, employment, education. One way or another, these cuts are affecting me and my family. I watch the ones I love suffer because of them. My mother has lost her job and is now unemployed due to the cuts. I have young nieces and nephews who no longer have the choice to attend junior kindergarten. My grandmother, in my eyes, is being abused by all the cuts to health care. I watch my friends' parents struggle to try and make their welfare cheques cover food and other living essentials, and Harris still continues to cut welfare.

What about me? I'm a student. How am I going to be able to afford an education? It is my right as a student to have an education. I try and find a job for \$6-something an hour, but all the positions are filled by 25- to 30-year-olds working for lousy wages to put food on their families' tables.

My parents and grandparents have struggled and worked their whole life to make this world a better place for me and my children, and Harris is taking that all away. Who gives him the right to destroy my future? I will continue to fight for what I deserve until I get it. I am participating in the occupation of the Ministry of Labour building because it is my future and I want to stand up for it. I would rather be part of the solution than the problem. When I do get a job, I would hope that the minimum standards would still be there, and better enforced, so I have a decent working life. The fight is not over; it has just begun.

0910

Mr Pat Hoy (Essex-Kent): Good morning, everyone. We're pleased to be here in Windsor to hear the concerns of everyone throughout the day. During your presentation, you mentioned education and welfare cuts and other actions taken by the government to date. In regard to Bill

49, you mentioned minimum standards and that you don't want to see the erosion of those. You also mentioned the minimum wage that is currently in place in Ontario. Could you describe for me what you feel could happen to the minimum wage under Bill 49?

Mr Carroll: We aren't here to answer questions. We're here to make a statement and that's what we've done, so we're done.

Mr Hoy: I appreciate your presentation very much. We have concerns from the opposition side on many of the issues that you touched on today. It's been a pleasure meeting with you.

Mr David S. Cooke (Windsor-Riverside): I appreciate the presentation you've made. I think what we all heard was that you're expressing a lot of frustration about what's happening in the province right now. I must say occupying a provincial office building is a substantial step for anyone to take. For young people to be involved in it, it obviously means you feel very strongly about what you've talked to us about this morning.

I just wanted to see if you could tell us, try to explain especially to the Tory committee members, what has led to this level of frustration among the three of you as young people in our province. We all understand that the system isn't going to work if our young people aren't a successful part of the system and supportive of not only our government system but our education system and so forth. Try to explain what has happened that has led to this level of frustration.

Mr LeMay: It's like they stated down there — the unemployment rate. It's affected us. The downsizing of corporations is affecting all of us. It's the young people; we decided to participate in this because, like you said, we're the young people and no one listens to us. No one listens to them especially; they're younger than I am. The only way to be heard — and we weren't heard last night because we requested to talk to Elizabeth Wither or someone from the Ministry of Labour and we were pulled off and kicked in the gutter again. By taking over and occupying buildings like that and having protests like that, that's the only way any of you are ever going to listen to us. That's why.

The Chair: Are there any further questions? Seeing none, thank you very much, folks. We appreciate your taking the time to make a presentation before us here this morning.

CANADIAN AUTO WORKERS

The Chair: We will now proceed to the group previously announced, the National Automobile, Aerospace, Transportation and General Workers Union of Canada. Hello, again.

Mr Bastien: Gerry Bastien, area director, and along with me is Mickey Bertrand, who is a national representative with our union.

I'd like to thank the Chair and the members for hearing the three previous speakers, who obviously are going to make our presentation look pretty meek, because when you hear from the rank and file or ordinary citizens, it's always more powerful and more effective than coming from us.

I do have to say personally that I've been negotiating with corporations now for 25 years and through those 25 years I've learned a lot about how I have to conduct myself and how people have to conduct themselves. I'd say that the Chair's attitude towards one of the members was my attitude 25 years ago when I was in negotiations. We had a lot of strikes too and a lot of conflicts, so I would say that we ought to review the attitudes that we have in general.

Our office, the CAW in this area, has about 100 different collective agreements, give or take a few, at given times. We're involved with bargaining with corporations day in and day out. The vast majority of our collective agreements are resolved without conflict. That has been that way for years and it's gotten a lot better in the last few years, until this government was elected. That's causing us more grief and more conflict and making it more difficult for us to come to collective agreements.

We see Bill 49 as eroding the rights of workers in the province, and any erosion of the rights of workers in this province will adversely affect our economy. It's going to lead to further weakness in wages and further weakness in consumer spending, which most economists are now identifying as one of the major problems. Interest rates are as low as they've ever been, yet the economy is not moving the way it should be. It's because there's not enough money in workers' pockets. Day in and day out, this Bill 49 again will start taking money out of workers' pockets.

We are encouraged that the government has delayed the proposals on flexible standards, but we strongly urge the government to just completely abandon those flexible standards, because those are going to create worse labour relations than we already have. It's going to put items on the table, labour standards, that are already there as a given right. Corporations are going to put that the bargaining table and cause further conflict among the parties.

The labour minister's news release on May 13 stated that they wanted to eliminate accumulation of years of red tape. If that's what this is about, we'd love to get rid of red tape. I'm used to working with red tape and I really appreciate when you can get rid of all the nonsense. If that's what you're truly doing, get rid of some of the nonsense.

It said also it's going to encourage the parties — the parties being the employer and employees — to be more self-reliant. That would be fine if the parties were on equal footing. What happens right now is that it's not an equal footing. Employees are in a radically unequal bargaining position in relationship to their employers, and that's a fact that a lot of people maybe in this room don't believe, but that is a fact. When you work in labour relations, that there's a lot of fear in our factories, places that are non-union. They're afraid to organize even when they want to. They secretly go around. They never openly say, "I want a union in this place." Very few people would ever say that. As democratic as it appears, it's not democratic.

It says in that news release that the changes will allow the ministry to focus attention on helping the most

vulnerable workers. I've got to say, in all honesty, that I'm never looking for a fight. I fight with people every day negotiating. Sometimes I don't know whether I like it or don't like it, but I'll tell you this much: I really believe it's totally dishonest. I think the agenda of the Conservative government to this day has been not to help the vulnerable workers. They're actually hurting them every day by their actions. It is absolutely dishonest to be stating that.

Just a couple of the proposals — and Mickey's going to talk some more about them, but a couple of the ones that I want to touch on is that the worker can only use the Employment Standards Act enforcement mechanism on a claim of up to \$10,000 as a consequence of an employer violation. The effect of that will be that when people are in that situation, they are obviously — most of the time the people who have to deal with the Ministry of Labour are people who have been disadvantaged and they're usually in a weaker position or have been hurt — closures or whatever — and a lot of time they are claims of over \$10,000. They're going to have to go through the courts, which are more costly, more expensive, more complicated. It's going to dissuade people from using the courts, or if they do, it's going to cost them all kinds of money.

The other one that I want to mention is the implementation of a regular minimum monetary limit on a claim a worker may file. That will lead to higher costs to taxpayers as it costs more to fund Small Claims Court than it does the operation of the Ministry of Labour. I don't see how that's going to save the government, if you're coming from that angle. It appears that's where the main interest is, to save some tax dollars. I see that as it's going to cost the taxpayers more. Also, it's going to affect, again, the most vulnerable workers. It may be a claim of \$200, \$300. I don't know what limits you're planning on putting, but again, \$200, \$300 to somebody at the bottom of the economic ladder is a heck of a lot of money. If they have to go through the civil court for that, that does not make any sense. It's going to be costlier for the government and it's going to cost a lot of the disadvantaged a lot more money and most of them probably won't even pursue it anyway because they can't afford to.

So now I'm going to pass it on to Mickey.

Mr Mickey Bertrand: As stated earlier through Gerry and the other group that came first, we're clearly opposed to Bill 49, and also what I think is important, to the manner and to the extent which the current provincial government continues its regressive approach to rewriting labour laws, such as the Employment Standards Act, the Labour Relations Act, without consulting trade unions and workers in Ontario.

Before I begin, I have a few questions that I'd like to throw out to the panel, and particularly the Tory members, that maybe you can address during the question-and-answer period. First of all, who was consulted regarding the need to change the Employment Standards Act? Second, were big business and the corporations or groups on their behalf consulted? The last question I have is, why wasn't labour consulted properly before the bill was drafted and put before us and put out to hearings such as what we're doing today?

0920

The CAW draft that you have in front of you lays out essentially the real and legal concerns about the bill itself. Our presentation, from Gerry and me, centres around being from a worker's perspective. Let me begin by saying that this bill moves the workers of Ontario in the wrong direction. We live as workers in a day and age when we are subject to enormous pressures in the workplace from the corporations. You have lean and mean production, which means less workers. You have higher productivity demands from the corporations on workers to work faster. Quality assurance is a constant concern; the team concept, which creates peer pressure. Health and safety concerns as a result of this type of work are always evident in the worker's mind; RSI, WCB claims and the list goes on, enormous pressures that workers face in the workplace on a day-to-day basis.

Let me say this: Corporate power on the shop floor is alive and well. Corporate power at the bargaining table is stronger than ever before, and continually we hear at the bargaining table, "If we can't achieve what we need in negotiations, we're going to look south of the border." Let me also say that the free trade agreement and NAFTA and the survival-of-the-fittest mentality has provided that ability for corporations to confront workers at the bargaining table with that ability.

The Employment Standards Act has provided a sense of security for workers for a lot of years. It's a minimum standard of living as it relates to wages, vacation, hours of work, overtime protection, holiday-pay entitlement and parental and pregnancy leave, to name a few. It was a minimum standard on behalf of all workers in Ontario that employers had to adhere to. It wasn't open to negotiations, it wasn't open to be arbitrarily changed, but Bill 49 suggests that we remove that protection for workers. Bill 49 gives greater advantages to the corporations over workers and the unions on their behalf by diminishing workers' access to justice.

Bill 49 requires unionized workers covered by a collective agreement to use their grievance procedure to enforce their rights under the statute. These current enforcement mechanisms ensure a basic and universal right for all workers in Ontario, including unionized workforces. Why, then, will workers where there's a collective agreement in place now not have the same statutory access to a complaint with the assistance of employment standards officers for investigations and enforcement requirements? This will not be there any longer. Unions, on behalf of their members, will now have to pay the costs of an arbitrator potentially to determine a case involving the Employment Standards Act and interpretation, when this responsibility should remain a public and universal guarantee of a workplace.

The point that Gerry touched on as far as the flexible standards, that is something that we find ludicrous. We find it unenforceable, we find it incomprehensible and we certainly want to see that one gone.

Bill 49 reduces the time during which a worker may bring a claim to recover money that is owed to them from two years down to six months. Is there evidence to suggest that the two-year limitation period had created a great number of problems? Not to our knowledge. So if

you miss the window of opportunity now in six months you're out of luck, the employer is scot-free and off the hook. If this somehow represents enhanced justice, we're missing the point. The hiring of additional officers to ensure complaints are processed in a timely manner would have been a step in the right direction towards justice, because justice delayed is justice denied.

Bill 49 proposes to contract out to private collection agencies the task of getting the corporations to comply with orders to pay. It's ironic how corporations can skip a legal order to pay. This is a legal power that should remain in the hands of the ministry, and they should pass a law: Where corporations fail to pay, maybe they can garnishee their profits until the debt is paid.

Bill 49 goes further, authorizing these collection agencies to collect less than what is owed, leaving the worker with, "That's the best we could get, take it or leave it." Where does that leave the worker? Employers knowing this, will never settle fully for what is owed; it would be negotiation time, from the employer's perspective. I ask the question, who's the winner and who's the loser as a result of this change?

This bill is not about fairness for workers; it's about corporate power and control over workers. This bill is not about strengthening workers' basic standard of life in the workplace; it's about total contempt for workers' rights organized and unorganized, it's about the corporate agenda, it's about the almighty dollar and it's about politics, unfortunately.

I want to say to the Tory members on the panel who establish the government of the day, we're hoping that you're listening, we're hoping that you're bringing the message back: Workers and the average person in Ontario are getting very, very frustrated with what's happening in Toronto. We're getting very, very frustrated with the moves towards labour legislation, towards basic standard that are set up in the Employment Standards Act. We're getting very, very frustrated, and we're getting tired of having to go to the streets to make our fight. But I'll send this message back: We will continue to use our feet until the sounds of our feet are heard in Toronto very, very loudly and you cannot ignore it any longer.

What we don't need is Bill 49, and what we do need is an increase in the minimum wage, better overtime protection language legislation, the right to sick leave and more protection for temporary and part-time workers. We need to move forward and not backwards, which is what Bill 49 does for us.

The Chair: Thank you, gentlemen. That was 11 minutes, so I'll say a minute per caucus for questioning. This time I'll commence with the third party. Mr. Christopherson.

Mr Christopherson: Thank you very much for your presentation. We don't have an awful lot of time to get into this in depth, unfortunately, but let me just say to you that I'm not aware of any group that was consulted on the labour side of the equation before this bill was dropped in, and we should never lose sight of the fact this government said this was only minor housekeeping changes. They didn't want to hold public hearings. They wanted to ram this through last June without any debate at all. We can never forget that fact.

I'd like to give you an opportunity on behalf of the auto workers you represent in this area to respond very directly to the Minister of Labour and to the members of the government side of this committee, who continue to insist that Bill 49 does not take away a single right from workers. Would you please respond to that assertion?

Mr Bastien: That's totally dishonest. Again, as I said in my remarks, the agenda is totally dishonest. Helping vulnerable people, that's not what this is all about. I believe it takes integrity in society to move ahead; it takes integrity day to day in your life and negotiations. This government is not being honest about its agenda; its agenda is not to help the most vulnerable. This is a backwards step for the working people of Ontario. There is no question about that.

Mr Baird: Thank you very much for your presentation. I wanted to ask you, with respect to your comments with respect to garnisheeing the profits from companies which refuse to pay work orders, I can tell you that we're not at all satisfied. I'm almost ashamed that today we're only collecting 25 cents on the dollar and that has existed for some five or 10 years. Obviously all parties have had trouble dealing with this issue. One of the things that has come out of these hearings is that we've got a number of ideas, and we've tried to get them as specific as possible, that we can take back and say what specifically we could do rather than go through a two-or-three-year court discussion going after a deadbeat company, which is very analogous to a deadbeat dad.

One of the things the previous government did with deadbeat dads was bring in a number of measures to go after them, whether it's a driver's licence or what have you. Our government is in the process of building on those changes and strengthening them incredibly. Can you tell me what specific examples you could give that we could take back? You mentioned garnisheeing the profits. Are there any other specific examples we could take back?

Mr Bertrand: The aspect of garnisheeing the profits, you've got corporations out there that are not lying down and dying; they're making a lot of money, they're making profits. They've got money, they're in business, and when they owe money and when there's a legal order for them to pay to a worker and it's not being paid, the worker is hanging out there for, like you say, years and years waiting for this money, we can't put that in the hands of private collection agencies. The thought came to mind last night when I was putting some of the final words together, why can't we garnishee their profits? I think it's an excellent idea to go after them and say, legally, "What's going to happen is we're going to go into your coffers. We're going to take the money if you're not going to pay it properly and up front, and we're going to get it." What I think would happen then is, you'd get away from where workers are being forced to take less than what they're owed. If they're owed 100%, then they ought to get 100%, and if it takes garnisheeing their profits somehow, then I think that's what we ought to do.

Mr Bastien: Excuse me, just on that point too, I think the closures or whenever we have workers who are in

difficulty collecting, one of the reasons I think it's only 25% is the pecking order of who gets what. I don't know all of the legalities of that, but the workers seem to be the last ones who can collect. If they'd just differentiate —

Mr Baird: They're not high enough on the list.

Mr Bastien: They're not high on the list. They're the last on the list. Everybody else can collect from the employer, and the workers are last. If they'd just put that —

Mr Baird: We're pursuing changes to the Bankruptcy Act at the federal level, because we completely agree.

Mr Christopherson: Ask them why they gutted the wage protection plan, then.

Mrs Sandra Papatello (Windsor-Sandwich): Thank you so much for coming today and, once again, taking the time to present, especially for the Conservative members. I think they need to see that there is another side to the coin around Ontario.

Pursuing the issue of the privatization of the collections, number one, the question is, who pays for the privatization of it? Who pays the bill collector? Secondly, the bill collector apparently can negotiate down to 75% of the claim. That 75% comes from the amount that's going to be due to the worker. I just want you to comment on that because we hadn't heard today about what they can negotiate down to as they're trying to work with a firm to collect. They can negotiate a settlement that in effect means the worker loses some 25% of what's owed.

Mr Bertrand: I think the bottom line, in response to the question, Sandra, is that the worker is going to be the one who loses out. When you put it in the hands of a private collection agency, one way or the other, they're going to get paid. Whether they collect 85% or whether they collect 75%, one way or the other they're going to get paid. Their basic job is going to be to go in there and get that job done, get some money out of the corporation. Whatever they can get, that's what they'll take. Whatever they can bring back to the worker, that's what they'll be stuck with. But they'll get paid. That's the bottom premise.

The worker is the one who's going to suffer, and I think that's the falsehood of what they're doing. That's the downfall of what they're doing, and the bottom line is that the worker is the one who suffers.

Mr Chair, if I could just make another comment, if you would indulge me, I've got a situation in a group of workers that I represented where their plant closed last year. The name of the plant is Highway Stamping. The employer came to us and said: "What we'll do is we'll guarantee that we pay you all the money that's owed to the workers with respect to vacation. We'll pay that, and we'll guarantee that those workers can work in the plant for another four to six weeks, but what we're doing is we're going broke." This corporation, Highway Stamping, was owned by Mauschbach in Germany.

So they kind of hung that aspect — because it was several thousand dollars just in vacation pay, let alone severance and notice pay and everything else, and termination pay. So what we did as a union is, we went to the workers and the workers agreed, "That's better than nothing," because we had just gone through the Windsor Plastic fiasco where we're still in the courts

trying to find some money in respect to severance pay. Those workers from Windsor Plastic accessed the employee wage protection plan. The workers from Highway Stamping signed a document with Highway Stamping that said we wouldn't pursue the company itself for severance pay if in fact — we agreed, and so we have this document. It was with the corporation.

Those employees went and they applied for the wage protection plan money, the \$5,000. To this day, right now, the government of the day is saying, "You're not entitled to that because you signed away all your rights," when we signed a document with the company. We had no intention of signing away our rights, and I think that's something the government is also doing to try to get away from its responsibility. That wage protection plan was set up so that when corporations said, "We have no more money," or there's a long list of creditors or bankers who are looking to get their money and the workers are on the fourth page somewhere at the bottom, they're not going to get anything, this was something for them that they could rely on during an adjustment period to try to find a new job.

What's happening now is the workers at Highway Stamping are being denied money to this plan because we signed something back a year and a half ago because it was good for us because it guaranteed our vacation and it guaranteed the aspect of being able to work for another four to six weeks. We did it in good faith. We worked in that plant and there was no sabotage and there was a good, quality product for the next four to six weeks. Then we go to the government looking for the \$5,000, because the corporation is in Germany somewhere, and the government of the day is telling us: "You're denied. You signed away your rights when you signed that document."

So I'd like you to take that message back as well, if there's anything you can do in that regard. It's another example, unfortunately, I'm sorry to say, of the government saying to workers, "There's nothing we can do to help you." I've got 100 workers out there who are in desperate need. Some 38% of those workers are still unemployed to this day and need that money. Their unemployment has run out; they've been off work for over a year. If there's anything you can do in that regard, we'd certainly appreciate it. Thank you.

The Chair: Thank you, gentlemen. Thank you for your presentation.

MIKE BELISLE

The Chair: That leads us to our next presenter, Mike Belisle. Good morning. Again, we have 15 minutes for you to use as you see fit, divided between presentation time or question-and-answer period.

Mr Mike Belisle: Good morning. My name is Mike Belisle. I would like to submit amendments to change the labour act:

Employer responsibility with respect to all employees' personal paid deductions are presently not governed or protected.

Employers, left unchecked, are free to fraudulently withhold all incoming moneys from employees, neglecting to pay premiums.

Employees are misled to believe the option to buy into various benefits, paid through payroll deduction, are benefits intact. The opposite is true in my case. For two years I paid into a group insurance plan, inclusive of total disability income. In April 1990, I was working full-time and diagnosed with severe, aggressive, unremitting rheumatoid arthritis. I was unable to perform everyday tasks as well as my job and therefore medically deemed disabled. At this time I applied for my disability benefits through the insurance company. I was informed by the insurance company, after receiving three weeks of insured benefits, that my policy was terminated. The payroll-deducted premiums were in arrears due to the fact that my employer did not submit the premiums.

This began a six-year battle entangled in red tape. Our legal system has failed me and I have amassed a debt of \$60,000 and still the fault of the employer and the insurance company has not been resolved. The RCMP, OPP and local police would not press criminal charges, one stating it would be too costly. The other could only try to recover the premiums paid.

The Ministry of Labour stated there were no guidelines to protect me and will consider whether this practice is widespread and warrants special legislative protection or whether the current system for resolving the dispute through the judicial system is sufficient.

My MPP would not even hear me and stated that because his party was not in power they could do nothing for me.

Although I paid union dues from my net income, I discovered that there was no union to back me due to the employer's neglect to forward the dues.

This represents a brief list of the contacts I have made over the past six years, with no results. I hope you can feel the aggravation and disappointment I have encountered in our system. My two children have spent the past six years watching my health fail. My wife, Margaret, has encouraged me to continue and has supported all of us through this battle. At present my life is on hold, waiting for someone to take responsibility for this wrongdoing.

There was a day when my job was everything that motivated me. It gave me self-worth, drive and a strong sense of security for my family. As you can tell, this has not only affected a paycheck in my life but all aspects of my relationships and a livelihood. I am compelled to bring this to you today, seeking relief from my frustrations.

Amendments have to be made to our government and labour laws, making employers accountable and criminally charged. To oversee and regulate employee-paid premiums is a must.

I thank the committee for this opportunity to bring awareness of situations occurring in our workplace and I hope that future generations will never have to deal with this injustice. Please feel free to ask any questions or concerns, as it is difficult to condense six years into such a short time allotted. I am available for questions or comments at any time in the future. Thank you.

The Chair: Thank you, Mr Belisle. That leaves us two and a half minutes per caucus for questioning. Questioning this time will commence with the government.

0940

Mr John O'Toole (Durham East): Thank you very much, Mr Belisle. It certainly is a story where you have not been served. You've been somewhat left on your own resources, and I acknowledge that. Were you represented in the workplace? There was a union.

Mr Belisle: It was an association.

Mr O'Toole: It wasn't a union.

Mr Belisle: No.

Mr O'Toole: An association of some sort. Did they afford you any kind of protection, support, advice, counselling?

Mr Belisle: No. It had been dissolved. See, this company that I worked for was purchased — he took over the reins for about two years and as he took over, that's when he more or less dissolved the union.

Mr O'Toole: So the company itself is in default or whatever. Is it still operating?

Mr Belisle: No, they went bankrupt.

Mr O'Toole: I've certainly heard your story and I know the other members have as well, so thank you for coming forward this morning.

Mrs Pupatello: Thank you. Your story is heart-wrenching and I'm sorry to hear the six years you've had to go through with this. Can you tell me, to your knowledge, if you're heard the presentations before, for example, what in Bill 49 do you see that the government is bringing forward in legislation that would actually help your situation? Do you see anything at all that they're doing —

Mr Belisle: I haven't really read it. I'm just here to possibly propose amendments to it.

Mrs Pupatello: For example, in terms of the collections, any of that? Some of it would be absolutely of no use to you, no help. When you have companies that are declaring bankruptcy, a private collection agency isn't going to do any good in trying to get any claims for you. I guess I just wanted to make that comment, that in fact if we're looking at helping vulnerable workers — and if there is one who might fight that category, your last six years would place you there. The bill that's being forwarded today for discussion is meant to help vulnerable workers; in fact it really doesn't do that and you're a good case example. Hopefully you'll allow us, having presented publicly today, to continue to use your story as an example.

Mr Christopherson: I would like to express our regret that you've found yourself in this situation as well. Unfortunately — and I don't like to be the bearer of further bad news for you — there's nothing in Bill 49 that I can see that's going to be of any assistance to you or people in your situation. In fact, as a result of this bill there will be more workers who are left vulnerable. There will be more ability for the bad bosses — and obviously you had one — to rip off employees in terms of the rights that they're entitled to, in terms of wages they're entitled to, in terms of payments they're entitled to, and in this case in terms of payments they should make on your behalf.

You may hear throughout the day that the government's going to do all these wonderful things in its overall review of the Employment Standards Act, but I

would suggest to you that you ought not hold your breath. This is a bill that the government said really was only minor housekeeping and now we know from these hearings that they're taking away major rights. I suspect that their overall review, while they may patch up a few things here and there, is going to continue to give employers more control over workers and less ability for workers to have rights. Even where the government does put in measures that purport to assist workers, the fact is there's no enforcement mechanisms that work.

We're on an agenda in this province of continuing to see rights of workers and their unions, not associations but real unions, being watered down. I think you and others like you need to come forward everywhere you can, because when you come forward today you don't just do it for you and your partner and your family, you do it for all the workers, and we need to expose what's going on in this province. I thank you for coming forward here today.

The Chair: Thank you, Mr Belisle, for taking the time to come and make a presentation before us. We appreciate it.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210

The Chair: That leads us to the Service Employees International Union. Good morning. We have 15 minutes for you to divide between presentation time and question and answer as you see fit.

Mr Kenneth Brown: Thank you. I had received a written communication. It indicated I should try to summarize the contents of my brief so as to allow time for questions and I will endeavour to do so.

What is most offensive about Bill 49 frankly is the attempt by the Minister of Labour to pass off what are clearly substantive changes to the Employment Standards Act as merely housekeeping amendments. What is proposed in point of fact are changes that will make it easier for employers to cheat their employees and more difficult for those employees to do anything about it.

The minister's recent decision to withdraw those sections designed to create flexible standards — to remove the floor, if you will — although welcome news, does not diminish our overall objection to Bill 49.

This submission is made on behalf of Service Employees Union, Local 210, representing some 6,000 workers in Essex, Kent, Lambton, Bruce and Huron counties. Our members are employed mostly in hospitals, nursing homes, rest homes, homes for the aged, school boards, universities, building service and community service agencies.

Some of the key amendments addressed in our brief are section 20 of the bill, section 64.5 of the act, enforcement under a collective agreement. Currently under the act, unionized workers have access to the investigative and enforcement powers of the Ministry of Labour. Bill 49 eliminates such resources to unionized workers and instead requires all unionized workers to use the grievance procedure under their collective agreements to enforce their legal rights. The union would thus bear the burden of investigation enforcement and accompanying costs, which could be significant.

Unions such as ours in the broader public sector spend substantial portions of our resources now on legal arbitration fees associated with arbitrators. As an example, to settle collective agreements under the Hospital Labour Disputes Arbitration Act and grievance arbitrations and OLRB complaints, our local spent approximately 20% of its total budget resources in legal fees, fees to arbitrators and related fees and expenses last year. That could only increase if Bill 49 is passed.

Also, with arbitrators, we believe there is a danger that we may not be able to match the consistent results that the act has under public enforcement. In the long delays associated with arbitration, currently it is not unusual for a grievance arbitration to take some 12 to 18 months and longer to complete the limited supply of qualified arbitrators. That could only get worse.

In the private nursing home and rest home industry, there is a particular problem with our organization. We have frequent ownership changes. Cases involving successor provisions of the act would become particularly difficult to determine.

Enforcement for non-unionized workers, sections 19 and 21 of the bill and sections 64.3 and 64.4 and subsection 65(1) of the act: With these amendments, the minister is proposing to end any enforcement in situations where they consider violations may be resolved by other means, namely the courts. The amount recoverable through the employment standards is limited to amounts under \$10,000. Currently, there is no limit.

What the employer owes is what they must pay and that is as it should be. The amendments would preclude an employee who files a claim with the Ministry of Labour from bringing any civil action concerning wrongful dismissal and pay in lieu of notice which exceeds the statutory minimums.

Legal proceedings are notoriously lengthy and prohibitively expensive for many, so these workers without unions may be left with no practical way of obtaining what they may well be entitled to under the law. Those who file a complaint under the act will have only two weeks to decide whether to continue under the act or withdraw and pursue a civil remedy. This process would be extremely unfair to non-union workers and opens the door for employers to violate their rights with impunity.

Maximum claims, section 21 of the bill and subsection 65(1) of the act: As noted before, these amendments introduce a new statutory maximum amount of \$10,000 that an employee may claim. The problem with this is that workers are often owed more than \$10,000, even in the most poorly paid sectors. Indeed, these workers are the very employees who will not have the means to hire a lawyer to represent them. This provision may encourage the worst employers to violate the most basic standards.

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Bill 49 also gives the ministry the right to set a minimum claim through regulation. Workers with claims below this as-yet-unknown amount may well be denied the right to file a claim. Dependent on the amount of the minimum it could have the effect of employers purposely keeping violations under the minimum, thus denying workers' rights and avoiding any legal penalty.

The use of private collectors, section 28 of the bill, the new section 73 of the act: These proposed amendments

intend to privatize collection and result in the recipient possibly paying collection agency fees from their settlements. So in essence, a minimum-wage worker could have his minimum wage claim reduced by the amount of the collection fees, plus the ability of the agency to negotiate that claim down. The thought of that is frankly obscene.

Limitation periods, section 32 of the bill, section 82 of the act: The major change here is to limit back pay entitlement to only six months from the current two years. The question is, why? If an employer is screwing their employees for 18 months, chances are they know they are doing it and they ought to have to pay the full cost of that action.

There are a couple of minor positive changes. The first concerns vacation entitlements and the second concerns seniority in service during pregnancy and parental leave. But in overall terms, this bill is unfair to workers, for the most vulnerable in the workforce particularly. It is about the race to the bottom.

The amendments proposed in Bill 49 come on the eve of what we are told will be a comprehensive review of the act. In our view, Bill 49 ought to be set aside and allow for a full debate of these changes as part of that comprehensive review and not allowed to pass under the false pretence of housekeeping changes.

Those are my remarks.

The Chair: Thank you very much. That leaves us two minutes per caucus for questions. We'll commence this time with the official opposition.

Mr Hoy: Thank you for your presentation. With regard to the minimum wage and people applying for a claim, which under this act would have to be under \$10,000, the government has stated that 96% of the claims are under \$10,000 currently. There were suggestions that those other 4% above \$10,000 made more money than that per hour or per year. But you have clearly stated that you believe minimum-wage workers could indeed be owed in excess of \$10,000. Correct?

Mr Brown: Yes.

Mr Hoy: So it begs, why have a limit at all? Can you envision that under the private collection scheme that is proposed in this bill, that people with like claims could receive variable settlements?

Mr Brown: I think absolutely, yes, they could. Who knows what might be in the mind of a collector to settle a thing? His concern is going to be getting his fee or what he's going to get out of it, not really the rights of the workers. Yes, the circumstances of their ability to collect could vary widely in terms of the settlements that are reached, just for the purpose of getting the thing off the plate, if you will.

The notion that higher paid workers — obviously there's a greater ability to have a greater claim if you're making more money. But some of the worst abusers frankly are — in my experience, the most difficult employers are employers who are not paying their workers very much money. I talked about the private nursing home and rest home industry. Even those that are unionized, we tend to have a great deal of difficulty. We have collective agreement violations, employment standards violations. They're without a doubt the worst employers

we have to deal with. In the case of the unionized, they're not making minimum wages, but we constantly hear of smaller homes that do pay their workers minimum wages, or not much more than minimum wages, and they frankly tend to be the worst employers in terms of violating very basic standard rights, vacation pay, getting people to — I know personally of situations where people have, in non-union institutions, been on two different time cards so as to avoid paying overtime. A liability of \$10,000 can be reached fairly quickly in that situation. We organized a place where an employer was — all of their workers were being denied about 45 minutes per day of pay, actual work-time pay, as a result of an employer policy. Until we organized it, nothing was done about that. That's since changed, but that had gone on for all of their employees in nursing for many years.

Mr Christopherson: Ken, thank you very much for your presentation. I appreciate it. One thing about the Tories, they do seem to be an equal-attack government. They are equally attacking non-union and union members alike, so we spend 50% of our time focusing on one and 50% on the other. I'd like to come back to the beginning of your comments about the burden that's being placed on unions as a result of the denial to make a claim through the ministry if you're fortunate enough to be a union member and what that will mean to the members in terms of the time and also what it could mean to the union as an organization, in light of the fact that we know the anti-worker Bill 7 took away tremendous amounts of rights that the labour movement had struggled for over decades. Here we see a further erosion and a deterioration of the ability of unions to represent their members.

Can you just expand on that a little bit, about why you're concerned about that and what it means to your union and your members?

Mr Brown: As I indicated, we spent, my own local — and we're very typical of our organization — approximately 20% of our resources in arbitration and arbitration-related fees on contracts and grievances last year. There are only so much resources to go around. So if the ante on that goes up — the way we're spread out, we tend to be an expensive union to maintain, we have a big staff. I've got staff people working 50 or 60 hours a week now. If we've got to start getting into the enforcement of employment standards, it could mean additional staffing and not just a matter of the cost of arbitration. It would just be prohibitive and then of course take away from our ability to focus on the collective bargaining issues to try and improve the lives of these people instead of fighting to get what is their minimum standard under the act. It's simply a matter of allocation of resources. You could literally be faced with allowing some violations so you can get on and take on the larger issues.

Mr Christopherson: It also allows the government to downsize the Ministry of Labour. We know they're going to lay off at least 45 employment standards officers as a result of Bill 49, and by pushing off and downloading the responsibility on to the unions, it allows them the flexibility to gut the Ministry of Labour.

I like your phrase where you say that "for all practical purposes the enforcement of public legislation has been

privatized." I think that's an excellent way to characterize this.

Mr O'Toole: Thank you very much, Mr Brown. I appreciate hearing from you this morning. In fact, I want to go on record as saying that I believe unions do a responsible job to represent their workplaces and this bill to some extent is working towards recognizing that and giving you more of that autonomy.

I want to draw a couple of things to your attention. The limitation period: You realize that about 85% to 95% of the current claims are settled within the six months now and it's also the standard in other provinces in Canada today. So it's not completely out of sync. You're aware of that, I would hope.

Mr Brown: I've seen the data that suggests that, yes.

Mr O'Toole: About 85% to 90% are settled in the six months. It's clear to expedite it — somebody said earlier today, "Justice delayed is justice denied." I think by allowing a claim to go on for two years on my behalf, for instance, those people coming in after me aren't getting addressed as well. The longer I delay confronting the dilemma — it's a chain reaction. What we're trying to do is make the upfront system work so that the claims are coming up, the assessments are coming up and the workers in the future aren't being penalized.

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I think the \$10,000 up-limit should be explained. The typical separation for an employee is 26 weeks. At 40 hours a week, that's 1,040 hours. At \$10 an hour, that's \$10,000; \$10,400 actually. So that's where it comes from, the severance type of package settlement, but the average settlement is \$2,000. Up until 1991, the up-limit was \$4,000. So I think we've made some adjustments to keep the system sustainable, but we need to be working with the partners like yourself, the leadership within the union movement, to make this bill do what it's supposed to do: protect the most vulnerable.

Much of what's been suggested, I believe the government is listening to. I think these hearings are productive. As we go around the province this week and another couple of weeks in the future, I'm sure the minister is listening and I am certain that this bill will result in improvement, as it says in the act that we're discussing.

Mr Brown: In response to that I would say that, frankly, your government is not working with unions as a partner in the process. We've largely been ignored for over a year. I was at one meeting with heads of unions in Ontario with the Premier and some of his caucus, but that was more, in my view, an exercise in PR than any substantive attempt to dialogue with the trade union movement.

Secondly, if we're saying, in effect, that the 10% or 15% that are over those claims don't matter, that's akin to saying these folks that are dropping off the welfare rolls are statistically unimportant and don't matter. I think that those 10% or 15% are probably the worst violations and we should be making attempts to prosecute and collect on those. They shouldn't be in a forgotten wasteland.

Mr O'Toole: The current bill doesn't work. We're only collecting 25 cents on the dollar. And I feel badly about that myself.

Mr Brown: That shouldn't happen, but I think again it's part of the public purse to collect that. I think we've got to make efforts to collect that publicly, and if there's a cost involved in that, then make the violating employers pay the cost, not the employees who have been screwed in the process.

Mr O'Toole: We do that. It's in the bill.

The Chair: Thank you, Mr Brown. I appreciate you making your presentation before us here this morning.

GERARD CHARETTE
IVAN STARK

The Chair: Our next presentation is Gerard Charette.

Mr Gerard Charette: Good morning, Mr Chairman. I've brought with me this morning, with your permission, Mr Ivan Stark, who is the president of the local chapter of the Canadian Tooling and Machining Association. So we'll share our time, if we may, and we'll keep it within the allotted time.

Mrs Pupatello: Is there a written presentation?

Mr Charette: No, I'm just going to speak from notes here, if I may.

Good morning, ladies and gentlemen. My name is Gerard Charette. I thank you for giving me this opportunity to make a submission on Bill 49. I'm a business lawyer practising corporate and taxation law in this city, and I represent individuals and businesses in helping them plan their affairs.

I support the objectives and structure of Bill 49 for the following reasons.

The first is simplicity. If there's one thing my clients crave more than anything else is simplicity. Indeed, the overwhelming thirst of Ontarians today is for systems and structures which are simple, whether they are judicial, political or social. Ontarians are tired of legal systems which create bureaucratic webs whose primary purpose is to serve only those who know how to make their way through the web without being ensnared.

I used to think it was great when the Minister of Finance would rise in the House of Commons and propose a new and complicated set of changes to the Income Tax Act. I was always tempted to send him a basket of fruit for sending me more work. No more.

My clients, both individuals and businesses, cannot afford any additional complexities in any legislation whatsoever. In fact, they demand a reduction in the number and complexities of laws and regulations. The residents of Ontario cannot afford to waste economic resources on non-productive activities such as unnecessary legal services. Workers, their families and their employers must know that they can function within a legal system that permits them to utilize the maximum amount of their financial resources for productive purposes and for the enjoyment of the fruits of their labour.

Frankly, ladies and gentlemen, I want the government to create less business for me and for my fellow lawyers, and I know that people behind me support me. This is why I support Bill 49 because I think it will, to a significant degree, reduce my clients' dependence upon labour lawyers and other lawyers who are required to provide continuous hand-holding and advice in connection with our complex system of labour laws.

Fairness to workers: Let's not forget that a complex system also frequently works to the detriment of employees and their families. It raises their own legal costs and expenses beyond what is reasonable. Ontario's workers deserve to be protected from unfair treatment. Ontario's laws do give workers a generous set of rights. Unfortunately, the complexity of the system also works to their disadvantage in many cases.

Now to the specifics of Bill 49, if I may.

Section 32 of the bill puts the onus on employees to bring their claims for compensation within six months. This is fair. The current time limit of two years is too long. We live in a society whose individuals are highly conscious of their rights and to the possibility that they may have rights. It is not unfair to impose an obligation upon them to identify their claims and to bring them forward expeditiously. Employers who face claims up to 24 months after employees have left are not treated fairly. They also have the right to have all claims dealt with expeditiously.

Secondly, the act now permits an employee to file an appeal where an employment standards officer refuses to issue an order in his or her favour. However, the act requires the appeal to be launched within 15 days. This is unfair to the employee, and the bill proposes to extend the appeal period to 45 days. This is reasonable.

Third, Bill 49 proposes to require employees to seek wages to elect to have their claims enforced under the Employment Standards Act or in a civil court action initiated by the employee but not both. This proposal is fair and eliminates the possibility that employers, and employees indeed, will be required to contend with proceedings in two different forums over the same issue. Again, such a state of affairs is not fair, it's overly complex and usually involves the waste of financial resources on bureaucrats, lawyers and the judicial system.

Fourth, privatization of collection, as someone has said, I think is a great plus for employees. If you think about it, employment standards officers get paid whether or not they collect a dime, and I'm not saying they don't do a good job, but the fact is, whether or not they get anything, they get paid. With a private collection agency it's going to be, "You collect, you get paid. If you don't collect, you don't get paid," and I think that's an excellent plus for employees. They ought to be pleased that this thing is going to, I think, give them a greater chance of getting money out of employers. The collection agency is also, as I read the bill, entitled to charge additional fees from the person who owes the money and that comes out of that person's pocket, and I think that's fair. If the money is owed, they ought to pay the cost of collection. On the whole, I think this is a plus for employees.

In summary, ladies and gentlemen, the Employment Standards Act still requires further reform and simplification. I am pleased the government is proposing to examine further streamlining. I thank you for your time and your patience.

Mr Ivan Stark: I'm here before you today as an employer and also as chapter chair, Windsor, for the Canadian Tooling and Machining Association. There are approximately 75 member companies in our association and we're part of the national organization which is

centred in Cambridge, Ontario. We are suppliers of tools, dies, moulds, patterns, machine tools to industry both in Canada and the United States.

As we all know, the Employment Standards Act establishes minimum standards for such matters as hours of work, holiday pay, termination notices, pregnancy and parental leave. All these standards were for the benefit of the worker.

We are here today again to deal with amendments to the administration and the enforcement of the act. We are in agreement with the proposed amendments. Again, these amendments, we feel, will improve the enforcement and the administration of the act. It should be noted here that the provisions in the act are just minimum standards only. All of our members have standards which are higher because those standards are set by competition. As we're going out recruiting skilled trades, we have to offer the benefits, the time-off packages and the paid holidays according to what our competitors are doing. So we are not just abiding by the minimum standards. We have to meet what our competitors are doing and because we have such a skilled trades shortage today, we have to then offer those benefits.

Many of the industries are under union contracts. They have agreements with various unions around the city and they have standards which far exceed the minimum standards as set by the Employment Standards Act. It is our opinion that all of us who have those standards which far exceed the minimum standards and those industries that operate with union agreements that have exceeded those minimum standards should attempt to resolve differences that may arise. Certainly there will be disputes, there will be differences that will always arise and we should have a mechanism here to deal with those differences, those disputes first. Then if we cannot deal with those disputes or differences among ourselves between employers and employees, then we would have the Ministry of Labour step in.

1010 As Canadians, we've always demanded that the government do everything. Well, the government cannot do everything because it becomes very expensive, but we as Canadians must take some of that responsibility ourselves and say, first of all, "We will attempt to resolve those differences." We are not saying we will eliminate the Employment Standards Act, because we deal far above those employment standards. We're saying we should take some of the responsibility ourselves and attempt to resolve those things. Only then, once we've resolved those differences, or we cannot resolve those differences, the Ministry of Labour will come into play.

So I think the legislation here is an attempt — because the majority of us are acting above the minimum standards. We feel those who are not, those employers who are abusing the system, should be held accountable, and that's why I'm here today, to say that if we can enforce that, because the majority of us are acting responsibly, those who do not should be held accountable and it is my wish that this legislation would speed up that enforcement.

I thank you for the opportunity to be here today and I wish you the best.

The Chair: Thank you both, gentlemen. We have five and a half minutes for questions, so just under two minutes per caucus. This round will start with the third party. Mr Cooke.

Mr Cooke: Just a couple of comments, first of all, to Mr Charette. I certainly want to tell you that, as somebody who's been an MPP for 19 and a half years now, this lowering it from two years to six months, I think you're using — and as a lawyer you know better than this. You know that the ordinary citizen does not become readily aware of what his or her rights are under the law and you've, I'm sure, had people come in to your office, just as I have, six months, a year, a year and a half after they've had a dispute, a difficulty at work, coming in and asking for somebody to intervene because they've tried everything they can under their own resources. And now to say that it's going to be 24 weeks because we've only collected 25% under the old legislation, so we're not going to try to make it more efficient, we're simply going to change the rules of the game so that fewer people are going to even be able to make claims, I think it's very unfair.

We're talking about some of the most vulnerable people in this community, in this province. So while I understand your point of view, you'd like to do away with every regulation, whether it's labour or whether it's environmental, to free up industry to do whatever they want to do, I think we also have an obligation as a government to continue to protect workers and give them some rights to access the system. As a lawyer, I think you know better than what you said this morning.

Mr Charette: May I respond?

Mr Cooke: Just let me put one other thing on the record, and then you can, since we don't have much time. I'd like to ask your colleague whether or not your industry association was consulted at all on this legislation.

Mr Stark: As far as I know, we weren't.

Mr Cooke: Do you think it's appropriate that on major changes to the Employment Standards Act neither business nor labour, the people who have to work, the people who — I always hear from Conservatives and from private industry that you guys are on the front lines, that you're in the real community and those of us who are politicians and bureaucrats don't know what it's like in the real world.

How the hell can you put together a piece of employment standards legislation and not even consult with the labour unions and business to put together a proper package? If we had done that when we were in government, believe me, business would have gone nuts.

Mr Stark: I believe there should be consultations, but we've got to work together on this because we can continue to fight each other and it's counterproductive. Because we're in the business here to make money.

Mr Cooke: How can we work together when government excludes business and labour from consultation?

Mr Stark: Well, then we have to make sure that we can work together.

Mr Cooke: So then, if you believe in consultation, you would agree that the bill should be scrapped and we should have consultations —

Mr Stark: But we are here as part of the consultation process, I thought.

Mr Joseph N. Tascona (Simcoe Centre): I thank you for your presentation. Mr Cooke is here for his first day. I've been here for all week and I've listened to over 100 groups, and certainly this is consultation and we've been listening. But I'll tell you this. What I've heard throughout this process is that — I was an employment standards officer and I have some familiarity with this field — enforcement is not the problem. The collection has been the problem. We collect 25 cents on every dollar. Over 50% of employers out there plead either bankruptcy or insolvency and they hide behind federal legislation and we can't collect. One of the areas that has been looked at is how we can collect better. Up till 1993 the government did the collecting, but the NDP laid off all the collectors. What we have now is employment standards officers with no experience and they're doing the collecting, so we're looking at private collection.

In your experience, have you dealt with workers' compensation as an employer, Mr Stark?

Mr Stark: Yes, I have.

Mr Tascona: What would you think, in terms of looking for collection, are the methods used under the Workers' Compensation Act in terms of collecting from employers to ensure that we get the money?

Mr Stark: In the past, collections have been miserable. They have not gone out there to collect the money they should have. Employers like us who pay our dues, pay our bills and everything else are grouped along with those who do not. That is the thing I'm upset about because we exercise our responsibilities, we pay our taxes and we pay our dues, but there's a certain segment of society that will not that gives us the bad name. That's why I'm in support —

Mr Tascona: In terms of how they collect — going into bank accounts and other measures, seizing assets — are those methods something that could be considered to ensure that employers that are going to continue to operate sweatshops and are getting away — as you call the bad employers. Are those the types of measures that could be used to collect the money that's due the workers?

Mr Stark: The measures could be enhanced. Once they've commenced with legal proceedings, I have found they haven't followed up on those legal proceedings. My interest is in making sure we have the enforcement and that those of us who have exercised our responsibilities and paid our way through are not lumped in with everybody else. I know there are some shysters out there who will give us a bad name, and I'm here on behalf of the tooling association to say that this is not true in all cases. We have that minority of cases that give us the biggest problems, and it's always the case. The minority always gives the vast majority the biggest problems.

Mr Hoy: Thank you for your presentation this morning. Mr Charette, during your presentation you stated that people were highly conscious of their rights. This is our fifth day of hearings and we have other weeks yet to come, but already we've heard that employees and employers are not aware of many particulars in labour legislation. I submit to you, from the experience we've

had in the first four days, that many people are not aware of their rights, and we have asked presenters and those bringing briefs before us to help us explain the rights and better inform the public of their rights. Given that there's ample evidence that people are not aware of their rights, would you care to reconsider that and would you have any opinion as to how to make them aware of their rights?

Mr Charette: I don't agree, Mr Hoy, that there is a lack of knowledge. You're hearing, with respect, advocates that are here, including myself. I don't think there's anything you would call evidence which says that people are not aware of their rights. I'm sure there are always some who aren't, but by and large we live in a rights-conscious society, it's just the way it is, and I see that every day in my practice.

Mr Hoy: With due respect, we've heard quite often from people, particularly on the unorganized side of the labour force, who clearly are not aware of their rights. They continue to be employed in situations where their rights are being violated, and through ignorance by either the employee or the employer no claim is ever opened until such a time that they realize that claim amount could exceed \$10,000. I have difficulty with particularly those more vulnerable persons who don't speak English or French as their language and are being victimized by unawareness of what is entitled to them.

Mr Charette: All I can say is that I don't see the evidence is there. This standard applies in most of the provinces throughout Canada. My in-laws are Hungarian. They didn't know much about English when they came to this country. I'm not aware that they were ever unduly treated unfairly. It's always possible that someone is going to miss the boat, but it's just not in sync with the general thrust of society. I guess if you're going to try and offer an insurance policy to every worker and every employer in society, you're going to come out with a massive piece of legislation that is going to hamper 99.9% of all situations that are handled fairly. I just don't think the game is worth the candle.

The Chair: Thank you both, gentlemen, for taking the time to make a presentation before us here today.

Mr Charette: Thank you.

1020

WINDSOR AND AREA COALITION FOR SOCIAL JUSTICE

The Chair: That leads us to our next group, the Windsor and Area Coalition for Social Justice. Good morning. We have 15 minutes for you to divide as you see fit, and I wonder if you'd be kind enough to introduce yourselves for the Hansard reporter.

Mr Rick Coronado: My name is Rick Coronado. I'm the coordinator of the Windsor and Area Coalition for Social Justice. With me is Mansfield Mathias, who is a member of the coalition as well.

We wish to thank the organizers of these hearings for being so prompt and efficient in setting up this time for our coalition. Unfortunately, coming to hearings on employment standards is not our idea of a good time.

The Windsor and Area Coalition for Social Justice is a coalition of many sectors of our society. Most of these

sectors are here today to address these hearings. The coalition is a social movement. We are non-partisan. We support no political parties as an organization. As a social movement it is our aim to educate and win over an increasingly large majority of the public and mobilize a majority of the public into an effective force that brings about social change.

Let me define who this public is that we are referring to. It is called the working class, the very sector of society that we are concerned about here today. The working class is those who have to work but have no real control over that work or other major decisions that affect them — for an example, order takers — and this includes the unemployed, pensioners and those who survive on welfare. Those are many of the sectors involved with our coalition. Unfortunately the working class rarely unifies as a class. This is mainly due to their socioeconomic position and this is why the coalition is so important. The only other time the working class is unified is when it unionizes.

There is no doubt or secret that this government intends to weaken the labour movement. Bill 7 and Bill 26 attest to that. The attacks on Ontario health claims for workers and the closing of the Workers' Health and Safety Centre are examples of what this government intends to do to the working class.

Labour and the coalition movement are unified as a grass-roots community to community-based social movement. We intend to make changes. We intend to put forward alternatives. That is what the coalition movement is about: protecting working-class values and traditions, and progression as a class of people long under the gun of the middle class and the ruling classes of this province and this country.

As you have heard, we have had 12 of our colleagues occupying the Ministry of Labour offices in Windsor. We hope that as this hearing moves around the province, more protests and demonstrations follow it.

Bill 49 hearings: This act, the Employment Standards Improvement Act, cannot be described as an improvement for the working class. Bill 49 reveals, along with the earlier Bill 7 and Bill 26, along with its capability for euphemistic titles a pattern of this government reinforcing the authoritarian nature of power relationships within society, particularly in the workplace. It is easy to discern that the working class is at once the object of this government's scorn and fear. The workplace is profoundly undemocratic as it is. If we were referring to a political system instead of a typical corporate workplace in Ontario, the oppressive authority relations would be called fascist or totalitarian.

The majority of citizens are employees and spend about half their waking hours under the thumbs of bosses who allow them no voice in crucial economic decisions that affect their lives most profoundly and require them to work under conditions inimical to independent thinking. The boss says when to show up, when to leave and what to do in the meantime. He tells you how much work to do and how fast. It is a demeaning system of domination which rules over working-class women and men for most of their lifespans.

This government has regarded labour as having an equal share of bargaining power. Indeed, capital and

labour are far from equal in bargaining power. Under the system of wage labour, workers are treated as commodities. It is not for the commodity to decide where it should be offered for sale, to what purpose it shall be used, at what price it should be allowed to change hands and in what manner it should be consumed or destroyed.

The social inequality within capitalism was foreseen by Adam Smith. Adam Smith said:

"It is not...difficult to foresee which of the two parties" — workers and capitalists — "must, upon all ordinary occasions...force the other into a compliance with their terms.... In all such disputes the masters can hold out much longer.... [T]hough they did not employ a single workman," the masters "could generally live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment."

Unions have lessened this inequality between the worker and manager-owner, but government legislation has continued to favour the manager-owner, restricting workers' rights and unionization, and unions' resources are minuscule compared to corporate assets. Working life remains a terrible testament to class inequality.

Walter Reuther's words remind us of some of the terrible conditions of working life prior to the legalized acknowledgement of unions. He said injustice was as common as streetcars. When men and women walked in to their jobs, they left their dignity, their citizenship and their humanity outside. They were required to report for duty whether there was work or not. While they waited on the convenience of supervisors and foremen, they were unpaid. They could be fired without a pretext. They were subjected to arbitrary, senseless rules. Men were tortured by regulations that made difficult even going to the toilet. Despite the grandiloquent statements from the presidents of huge corporations that their door was open to any worker with a complaint, there was no one and no agency to which a worker could appeal if he were wronged. The very idea that a worker could be wronged seemed absurd to the employer.

Much of this indignity remains today, and with the globalization of capital and the Harris government's disdain for the working class, the gains of a century of working-class struggle are being destroyed.

I now turn the remainder of our presentation over to Mansfield Mathias.

Mr Mansfield Mathias: Greetings, panel. I have lived through a period which witnessed historical changes in the way bosses have been required to treat their workers, from the Master and Servant Act to the present labour codes today. The Tories ran from 1943 to 1987, 45 years without interruption, and during that period produced the best labour code in the country. Why?

In 1943 a CCF party came within four seats of defeating the Tories. During that early part of the period, two Communists were elected to city council in the city of Windsor; two Communists were elected to the Ontario Legislature from Toronto ridings. Sam Lawrence, a radical labourite, was elected mayor of the city of Hamilton along with a Communist on the board of control. This revolutionary ferment stunned the establish-

ment and drove them to some rational thinking, not the commonsense kind.

This favourable labour legislation was designed to bolster right-wing tendencies in the labour movement and to create an image of benevolent capitalism which would be better for workers than a system of Soviets. This was suggested in a Toronto speech by Michael Parenti, an American political scientist, who said:

"For years they had to tell their working class that you live better than they do under Communism. For years they had to present a capitalism with a human face.

"Now that the Soviet Union is gone and Communism is gone, they have pulled out the plug.... There is no need to tolerate any accommodation with those who have to work for a living."

This statement is punctuated by your government's activity. You have stirred the labour leadership in this province, and its militant rhetoric has sounded the alarm. However, the troops have not yet been mobilized. Our industrial army is for the time being soundly asleep, curled up comfortably in the protective arms of the existing Employment Standards Act.

1030

Now hear this: If in its blind stupidity this government pulls the Employment Standards Act out from under these sleeping Ontario workers, it will be like poking a stick into a hornets' nest. In the twinkling of an eye, you will rouse this sleeping giant and turn these comfortable workers into the revolutionary ferment that confronted your establishment some 50 years ago. Think about it.

What is an employment standard anyway? In the act, "employment standard" means a requirement imposed upon an employer in favour of an employee by this act or the regulations." This recognizes the master-servant relationship, worker to boss, and attempts to mitigate the power imbalance between the two, an imbalance which unions strive to redress. Your amendments will turn this reality upside down and impose requirements upon the servant. Your efforts will produce a modern-day Spartacus. Thank you.

The Chair: Thank you both.

CANADIAN UNION OF PUBLIC EMPLOYEES WINDSOR, ESSEX AND KENT COUNTIES

The Chair: The next group up is the Canadian Union of Public Employees, Windsor and area office. Good morning.

Ms Barb Laforet: Good morning. I'd like to thank you for giving me the opportunity to make this presentation. My name is Barb Laforet and I'm a national representative working out of the Windsor and district area office. We cover employees in the municipal, university, health care and social agency sectors — a whole myriad of employees, numbering about 8,000, in Kent and Essex counties.

In listening to Mr Brown's comments this morning, he has a lot of views that are shared as well when you're reading through this brief. What I hope to do is paraphrase what's going on here, and then if you have any questions or clarifications, I'd be pleased to answer them.

What were presented to us as being housekeeping amendments in our opinion are something that go far

beyond housekeeping types of amendments. What we see is that these changes are things that are going to be making it easier for employers to cheat their employees and harder for workers to enforce those rights.

Section 20 of the bill has to do with enforcement under a collective agreement. What we're seeing, in my opinion, is the government offloading its responsibilities on to unions. We're seeing this not only in the employment standards area but in other areas as well, one of my most recent experiences being with human rights. Where before there has been access to a general minimum standard of acceptability within our society, it's now saying we're going to be taking the bulk of the avenues of recourse and putting it on to the unions. In this case it's going into the grievance procedure, as has been suggested in many other of the areas as well.

We have a lot of difficulty with this, most primarily because the employment standards officers have a great deal of investigative capability under the act, and under the general labour relations types of situations the unions don't have access to things such as employers' records, payroll, work schedules, that sort of thing. The task of proving any particular issue becomes significantly more difficult for a union rather than for the employment standards officer. It's my understanding that anything in the amendments certainly doesn't give unions the equal opportunity of access that currently exists for the employment standards officers.

In addition, you also have arbitrators who are being requested to make decisions that have to do with the intent to defeat the purpose of the act and its regulations. Arbitrators also don't have the investigative capabilities that are certainly given to employment standards officers, so there may be an argument that arbitrators wouldn't have the jurisdiction to make those determinations.

Ultimately, in terms of the union, it's going to be taking far more investigation time, enforcement and increased cost as well at a time when, because of other changes by the government, we're losing our members. Because of that, the resources the union has previously had we certainly will not have in the future.

In addition, very many of our members are in the low wage categories. I have one local that makes \$7.10 an hour. In this particular area, we're seeing all kinds of situations where the potential for complications exists very much for those particular people.

When you're looking at the enforcement for the non-unionized employees and the offloading into the court systems, one of the questions that I personally have to ask is, has anyone considered what the courts can currently handle if they're going to be dealing with this increased workload? We certainly have been hearing all over the place about the tremendous backlogs in the courts, so that's something I would recommend you consider in your deliberations here. A downsizing in one area may be a significant upsizing in another area, and a significantly more costly area.

Limiting the amount that is recoverable through the employment standards to \$10,000 is a very bad thing to do. You have a situation where individuals are, for all intents and purposes, extending credit to their employers when they work. If any credit is extended to me, there

certainly is an understanding that I'm going to have to pay my full bill, regardless of the minimum, regardless of the maximum. If I owe \$5, then whoever should be coming after me. If I owe \$20,000, I should be responsible for paying that. It's the same issue: credit is being extended. Whether a percentage falls into any particular category in my opinion is totally irrelevant. The bottom line still rests that if a dollar is owed, a dollar should be paid. No one should have to be excluded by virtue of some arbitrary minimum or maximum.

When you have the choice of filing either a civil action or through the Employment Standards Act, this also is not a good thing. If you're in a situation, for example, of a wrongful dismissal, it can result in a completely different sort of resolve than if you were bringing forward some kind of overtime hours or severance pay issues, those sorts of things. You're dealing with apples and oranges. Usually, what happens in those cases will be fighting on two fronts. It quite likely will get resolved on one front to an individual's satisfaction, but the issue still boils down to, if you can get different resolutions going through different areas, you should be able to claim whatever it is that your right gives you, regardless.

1040

Having to do with the use of private collectors, there has been a pretty fundamental problem with a failure to enforce standards under the act to begin with, but in my opinion the resolution to this problem shouldn't be just to offload the problem on to the collection agencies; you should be doing something to deal with the issue up front.

When you have a private collector, you also have fees that are being charged against the person who owes the money. You have negotiations that are going on then, and ultimately a collector could be convincing someone for no other reason than expediency to settle for a lesser claim than they're entitled to. You wind up with a situation where an employee who is owed X amount of money takes a reduced amount of money, and a portion of that is going to be going to pay the fee collector as well. Although it looks really good on paper, you have a situation where an individual who is owed the money ultimately, in reality, not on paper, is paying the fee collector.

In terms of the limitation period, currently it is two years, and its being reduced to six months also creates an injustice. You have situations where the most vulnerable employees remain in working situations out of fear because they can't find alternative work, and certainly in the work climate we're having right now you're going to have an increase in that kind of frame of reference with workers. Usually, employees don't go after their employers because they're at risk doing so when they're actually at work, so they'll postpone that until afterwards. Going back to the issue of the credit that's being extended to the employers from the workers to begin with, they shouldn't be precluded from going after the money that is owed them due to the fact that they haven't previously out of fear of increased retribution from the employer. It sets up an extremely negative and downward spiral.

In addition to the time limits going to court, the burden of the cost is going to be also put upon the employees.

These, again, are the most vulnerable. They've been in a situation where they haven't been getting the money that's been due them and these are exactly the sorts of people who can't deal with those sorts of issues in a court system because of the cost, the time delays and the lawyers' fees and that sort of thing. Certainly, when we're getting into this kind of a structure, we're not facilitating administration or streamlining procedures at all. What we're doing is setting up a system so that more people are going to be walking away from situations where they are owed by an employer.

I know that — I call them the flexible standards — section 3 of the bill has been withdrawn, but I need to mention that the minimum standards are a foundation. It's something that we as a society as a whole have come to an agreement on. We don't want an American type of situation up here. The idea of being able to negotiate below-minimum standards is atrocious. I have worked in a province that did have that kind of legislation in their employment standards act, and it led to nothing but disharmony and discord. It was a terrible, terrible situation. I won't dwell on it, in that it has come off the table at this particular point, but I would encourage you not to entertain that idea at all.

As was mentioned previously, the two positive things that should be reinforced are section 8 of the bill, the vacation entitlement, and the seniority in service during pregnancy and parental leave, which we can support. There are still some other issues that have to be worked out with that, but hopefully we can see eye to eye on those particular issues, at any rate.

In concluding, I reiterate that these coming as house-keeping changes I find really repugnant, but beyond this, the core of the problem is the nature of the amendments themselves. As the comments have already made clear, standards shouldn't be eroded and rights shouldn't be made more difficult to obtain and enforcement of such shouldn't be contracted out and privatized.

The Chair: We've only got about 30 seconds per caucus, so if anyone has a brief comment or an extremely brief question, we'll start with the official opposition.

Mr Hoy: Thank you very much for your presentation on behalf of the workers you represent in Windsor, Essex and Kent. You spoke about the two weeks to decide whether to go through the avenues of the act or pursue it through the courts. Two weeks, depending on where one goes to seek legal advice, could really only be 10 or 12 days, depending on how that particular law firm sets up its own week. Really, two weeks is, in my mind, not 14 days in this case, so it's even more constrained than that. I just make that comment. Thank you for your presentation.

Mr Christopherson: Thank you very much for your presentation. You have an excellent grasp of Bill 49. That's clear. We in the NDP have been expressing real concern with the fact that the minimum threshold the legislation will give to the cabinet is one that will over the years incrementally move up so that more and more money, quite frankly, can legally be stolen by the bad bosses. Is that a fear you have? Do you think it's well founded?

Ms Laforet: Beyond a doubt. There are all kinds of ways that employers can manipulate that sort of thing to begin with. If there is a minimum, they could very well be setting up some kind of system so that within the given time period they're staying within the minimum. If the minimum goes up, then it just, as you say, means that much more money employers can steal from workers. There are a lot of unscrupulous employers out there who would be champing at the bit to do exactly that.

Mr Baird: I just want to respond to the comment Mr Hoy made, because it's interesting. The 14 days to decide isn't so much the 14 days. What it is, is that under the act you would have the ability to choose between the courts and the ESA. Once you applied — it's a sort of doublecheck mechanism — you would be told again; you would have the 14 days, in addition to the six months before you could bring your claim forward, to make a decision. The reason it's there is just to be absolutely clear that people definitely know that, that they have a choice to make. That's why that is there, not to say that you have to make it within 14 days. Having said that, though, we can certainly consider the remarks you've made on that issue, because there's certainly a case.

Ms Laforet: One of the concerns we have in terms of that two-week period is that even if they were told very clearly at the front end, we have an awful lot of employees who are English-as-a-second-language and there are problems associated with that. The process, even in coming to a conclusion about whether you're going to file a grievance over a half-hour of your lunch that got taken away from you or something like this, is a major consideration for an awful lot of individuals. Someone who's told something may have to go home and talk with a partner, may have to talk with friends. There's a whole extensive decision-making process. And these are the people who are taking the initiative to go out and do that immediately. Human nature being as it is, they may sit back and not do anything for two or three days just while they get a grasp on it within their own head to start with before they initiate that kind of procedure. It can be overwhelming to some individuals.

Mr Baird: What percentage of your workers would be English-as-a-second-language?

Ms Laforet: Just off the top of my head, I'd say 20% maybe.

Mr Baird: Do you provide any documents in the other languages?

Mr Laforet: Yes.

The Chair: Thank you for taking the time to make a presentation before us here this morning.

1050

CANADIAN AUTO WORKERS, LOCAL 1973

The Chair: The next group up is the Canadian Auto Workers, Local 1973. Good morning, gentlemen.

Mr Bert Desjardins: Good morning. My name is Bert Desjardins, the vice-president of Local 1973. With me are Mike Thomas, the chair of our PEC committee, and Bob Nesbitt, the financial secretary of CAW, Local 1973.

The first thing I'd like to do is talk a little about the need for consultations. When you're going to change the

Labour Relations Act or the Employment Standards Act, I would think it's only fitting to go around the country and talk to labour. Labour, the unions, represent a great majority of the workers. They represent the working people, the interests of the working people, and when you're going to make changes to those laws, it seems to me only right that you'd go around and particularly come to a city like Windsor, which is an industrial city and has a large amount of industrial workplaces. I think it's good that you get out of the city of Toronto and come around the country. You might find it very interesting. Some people probably saw the casino last night or whatever, so we've got more to offer in some respects than Toronto, and you might also want to take a drive along the riverfront here. We have beautiful parks and everything else. You might find there's life outside of Toronto. So we appreciate you coming for consultations. We requested that you come and go around the province, and we're glad you did.

We spent a fair amount of time on this brief, so we hope you take as close and critical a look at the brief as the time we spent preparing it. With that, I'll start reading the submission to you.

Introduction: This submission is made on behalf of the membership of CAW, Local 1973. CAW, Local 1973, is composed of 2,300 active members employed by GM in Windsor, 1,100 laid-off GM workers and approximately 1,000 retirees. The first point we want to stress is that we believe the workers of Ontario and the unions that represent these workers should be consulted on any proposed changes to labour and employment laws. Our local sent requests that public hearings be held and we are glad that we now have an opportunity to present this submission.

We come before you today to voice our opposition to Bill 49, which proposes to make changes to the Employment Standards Act, ESA. Employment standards and various labour relations laws and acts came about as a result of elected officials realizing that rich and powerful people and corporations held an unfair amount of power and privilege over the common labourer. The working class and the disadvantaged will always look to the future with hopes of making a better life for themselves and their families, whereas the rich and powerful will attempt to amass more power and wealth at the expense of the poor and working class. Unfortunately, the rich and powerful are reversing gains that labour has made over the years, and the proposed changes to the Employment Standards Act, Bill 49, bear witness to these reversals.

Flexible standards, section 3 of the bill, subsection 4(2) of the act: Overall, this is to CAW, Local 1973, the most odious section and subsection of the bill. A few short years ago, the implications of these changes would have been unthinkable. As we understand the proposed changes, Bill 49 allows a collective agreement to set the minimum standards as related to vacation pay, public holidays, overtime, severance pay and hours of work when these basic items are assessed together.

General Motors workers take the greatest of exception to any changes which would allow GM the power to force their workers to put in more hours during the week. GM workers in Oshawa, over the last few years, have

faced demands to work more hours per day and per week and granted the company some additional hours to secure their jobs. The increased hours already granted by the membership of CAW, Local 222, the local union representing the GM Oshawa auto workers, haven't been enough to satisfy GM, as they have been lobbying the government for changes to allow them to force mandatory overtime on workers, and that may very well be why we are facing some of these proposed changes to the Employment Standards Act today.

Last week, General Motors laid down a list of demands it wants from the union in the 1996 round of negotiations. The Globe and Mail reported, "GM also wants more flexibility to enforce mandatory overtime."

This week the Windsor Star reported, "Labour minister Elizabeth Witmer announced Monday she is withdrawing a section of Bill 49, a package of amendments to the Employment Standards Act, that would have allowed employers and unions to negotiate standards for work hours, statutory holidays, overtime and severance pay that are now set out in the act."

Is it coincidental that GM has been lobbying for changes to the act so that they may force their employees to work longer hours; that Witmer introduced Bill 49, which included changes to the Employment Standards Act, which could permit changes to allow for longer working hours; that last week GM included in its list of demands to the union that it be allowed more flexibility to enforce mandatory overtime; and that this week Witmer withdrew a section of Bill 49 "that would have allowed employers and unions to negotiate standards for work hours"?

Governments must come to realize that enacting laws that allow corporations to bargain for longer working days or more work hours in a week also allows companies to employ fewer workers. Rather than spreading the benefits of improved technology throughout the populace, the benefits become concentrated in the hands of a few, consequently leading to gross divisions in society. Allowing corporations the power to bargain more hours of work could ultimately lead to monumental dissension and violence in workplaces and society, because as the divisions in society become greater, more of the disadvantaged could feel justified in lawless action when they reach the point where they feel they have nothing to lose. They may very well feel that lawbreaking is their revenge on a society that has denied them a chance for a decent standard of living.

Another scenario which will occur is that some corporations will choose to lay off workers or not recall workers, opting instead to work a shrunken workforce more hours. This fear of workers being forced to work more hours while their co-workers have lost their jobs is based on the fact that it is occurring right now at different workplaces every day.

At the GM transmission plant in Windsor, there are presently about 870 workers who have been laid off since 1993. The CAW representatives at the GM transmission plant must constantly challenge the plant management to bring back workers rather than have the workers who have been recalled work extended hours. Many of the workers who are in the plant working were laid off

themselves for one to two years and during that time accumulated large bills which they are anxious to repay. The transmission plant union reps have mostly been united in this struggle to recall workers rather than work extended hours, but at many workplaces the union won't even suggest to its members that they should demand that the company recall workers before scheduling extended hours, as it cuts into their overtime and is a politically unwise move.

No one will deny that if workers are forced to work longer days and more hours in a week, they will be more stressed. Unfortunately, the stress caused by working longer hours will also affect marriages and children will suffer.

Some people need the structure of work in their life to remain lawful and peacekeeping citizens, but if increasing masses of citizens are denied that work routine and the fruits of society that a job brings, the result very well could be escalating anarchy. Many young people are rebellious and irresponsible through their teen years, but as they face the demands of work and families, they mature. Denying young people meaningful jobs which offer a decent standard of living, with a chance to raise families, will delay and in some cases prevent people from acting responsibly in society.

1100

A worker who is remunerated at the Employment Standards Act level can't afford to raise a family or hope to save for the future, their only hope being to get enough skills or be fortunate enough to move on to a better job. With these proposed changes, even moving to better jobs will be riskier and more complicated, as people seeking new job positions may not be aware that the basics they previously enjoyed and took for granted because they were law are not offered at their new job because those minimum standards are no longer the law.

Although the proposed changes to the basics are only impacting unionized workplaces at this time, we are especially fearful that once this government has carved these basics away from the organized, the unorganized and weakest will then be seen as just another step for the corporate power-hungry of this province.

For the workers and unemployed to benefit from changes to the ESA, the basic standards of hours of work, overtime, vacation pay, severance pay and public holidays must remain enshrined and be improved upon, not caught in a downward spiral. Changing the basic hours of work to eight and 40, where all hours worked after 40 hours in a week are optional, will create a more humane workplace and could lead to management considering the addition of a second or third shift. With an expanded workforce, the fruits of employment will be spread among a greater number of people, rather than working the existing employees to the point of exhaustion.

Enforcement under a collective agreement, section 20 of the bill, section 64.5 of the act: Isn't it ironic that the Ontario government has made it more difficult to organize workplaces — Bill 40 — and yet is willing to force more work on the unions that are already in existence? Through the enactment of Bill 40, which ensured more corporate control over workplaces by putting greater limits on union organizing, we see Bill 49 as a further

extension of corporate control over workplaces. The more workers' rights are limited, the more corporations can domineer and bully their employees.

At the present time, unionized employees can use the investigative, persuasive, representative and legal powers of the Ministry of Labour. In reality, limited companies and corporations make the final decisions, even when they are facing the most experienced unions in the world. Heaven help any union that stands in their way. With this said, when workplace closures occur, those workers and unions are in a most unenviable position, and having a minimum severance and termination pay base from which to work eases the fears of the workers and union reps. When a workplace closure is occurring, the union reps are also losing their jobs, and although it may not seem like a lot, it does ease the pressure and provides some peace of mind to know that there are minimum standards and that there is some additional help through the Ministry of Labour for their members.

It is a very difficult and demanding job to be a good union rep. The job requires an immense amount of knowledge, dedication and unselfish sacrifice to do the job correctly. By requiring union reps to undertake enforcement of the standards contained in the Employment Standards Act, the framers of Bill 49 are requiring union reps to not only have the knowledge of their job, which can often be overwhelming in itself, but if this bill is passed as it is now, then the union reps will have to assume the work of the Ministry of Labour. With an increase in work comes an increase in the chances of a misstep.

If this government is so intent on shifting this work away from the Ministry of Labour, why doesn't it go a step further and amend the act whereby every non-unionized workplace is required to set up a joint committee to look into and correct any violations of the Employment Standards Act? Such committees could be set up along the lines of workplace health and safety committees and could act as a subordinate arm of the Ministry of Labour. Requiring the private sector to train and set up such joint committees could lead to better-organized workplaces in non-unionized environments and could go a long way towards protecting the unorganized in the province of Ontario. Such joint committees could be a meaningful and progressive step for the workers of this province and would actually give some validity to the name Progressive Conservative.

Final verdict: CAW Local 1973 views most of these proposed changes to the Employment Standards Act as harmful to all workers, another attack by the Conservative government on the working people and poor in the province of Ontario, and therefore we are opposed to Bill 49 as it is written. Governments should strive to improve the standards of working people and the poor in society. We hope the provincial government of the day totally rethinks Bill 49 and decides to act in the best interests of the overwhelming majority of people in this province, not the moneyed.

The Chair: We've actually gone over 15 minutes, so we won't have time for questions, but we appreciate your taking the time to make a presentation before us here today. Thank you.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625

The Chair: The next presentation will be from the Labourers' International Union of North America, Local 625. Again a reminder that we have 15 minutes for you to use as you see fit between presentation or questions and answers.

Mr Wally Dunn: My name is Wally Dunn and I'm a representative of Labourers' Local 625, but I want to assure this committee that not only the Labourers have great concern over this bill; so do all the other construction trades in this province.

As a construction labourers' union representative, I am particularly concerned about those changes which restrict access to the employee wage protection program. It is difficult to evaluate these changes because the bill is not very clearly drafted and parts of it are capable of different interpretations. However, I'm advised by our lawyers that one possible interpretation would exclude unionized workers from any participation in the program. Although not all lawyers agree with that interpretation, I am concerned that it may prevail if the bill is not clarified.

At a minimum, the bill appears to restrict the participation of unionized construction workers in the program by requiring them to choose whether to pursue a lien claim or proceed with an employee wage protection application.

Currently, construction workers can pursue an EWPP claim and lien claim simultaneously, with an eventual setoff of the amounts recovered. However, under this new legislation construction workers will have to abandon their EWPP claims within two weeks of commencing a lien action. Given the brief statutory time limits for starting a lien action, this election will come up very quickly, in all likelihood before there is sufficient information available for the construction worker to make an informed choice.

A variety of factors can influence the attractiveness of a lien action as opposed to an employee wage protection claim. For example, lien actions can yield greater recovery than EWPP claims, which have a \$2,000 limit. But unlike the EWPP claims, lien claims are subject to demands by Revenue Canada for GST and source deductions, which can wipe out any prospect of recovery.

At the time of the required election, it may not be possible to ascertain whether Revenue Canada plans to make a claim. If Revenue Canada later intervenes with a large claim, a construction worker who chose to rely on the lien process may not recover anything, or less than what he or she could have got through the employee wage protection program.

Similarly, a construction worker who chose to pursue an EWPP claim in anticipation of a large Revenue Canada demand which did not materialize would suffer as a result of the required election. It is not uncommon for months to pass before the size of a holdback and the extent of all claims are known. Therefore, it is quite likely that workers will have to make their election without the benefit of such information.

Although the bill requires all employees to elect between EWPP claims and civil actions, this election will be more expensive for construction workers because of the costs associated with liens prior to the start of an

action. In order to preserve their right to begin a lien action, construction workers must register a lien beforehand. That costs the workers money, especially if the workers use a lawyer, and they cannot get their money back if they eventually decide to abandon the lien in favour of an EWPP claim.

Even leaving aside the question of sunken lien costs, the bill will increase the cost of EWPP claims for unionized construction workers because it makes the arbitration of grievances a prerequisite for recovery. The program currently uses the same approach as the courts and does not require unions to take grievances to arbitration if there is no dispute as to the correct interpretation of the collective agreement. This pragmatic approach has spared unions and the Ontario Labour Relations Board, where construction grievances are heard, considerable expense. Now, however, it seems that we will have to get a decision upholding the entitlement of our members even if the employer is indifferent or agrees with the amount that we say is owing. This change will put pressure on the unions to increase dues and add to the strain on the Ontario Labour Relations Board's resources.

1110

So far I have focused on changes which restrict access to the employee wage protection program because I believe that these changes deal more harshly with our members. However, I would be remiss if I did not state my union's opposition to the various provisions which threaten to diminish access to justice for all workers, both organized and unorganized. I will now touch briefly on some of these changes.

The provisions permitting parties to contract out of important minimum standards will result in a race to the bottom, with employers striving to roll back fundamental, long-established entitlements. This race will make negotiations more acrimonious, settlements more difficult and strikes more likely as workers strive to preserve their entitlements.

The requirement that unionized employees pursue all claims through grievance arbitration will place tremendous strain on union resources at a time when most unions can ill afford added costs. This is another example of the government penalizing union members by making them finance services that the ministry provides to other workers at no charge. Due to a scarcity of resources, unions will have to make tough choices about which claims to take forward. These choices will expose unions to complaints by disgruntled members and cost the unions more money to defend.

The new \$10,000 maximum penalizes the most vulnerable employees. Workers are often owed more than \$10,000 because they dare not challenge an employer while they are still dependent on that employer for income. However, if this bill passes, such workers will never get full restitution and employers will reap windfall gains by virtue of their limited liability.

The effect of forcing non-union employees to choose between the ministry and the courts for enforcement will be to reinforce the \$10,000 maximum since most employees cannot afford the cost of a lawsuit.

The new six-month limitation period further penalizes vulnerable employees who find it necessary to put off

making a complaint until after they have severed their employment relationship by quitting or finding another job. If they fail to file before the deadline, their only option will be to go to court, but that won't be a real option for most because of the formidable cost.

The as yet unspecified minimum for claims totally undermines the concept of basic employment standards. No violation of the act can be considered petty for low-income employees, but this bill would deprive such employees of a remedy for what well-paid bureaucrats and politicians consider minor violations. This change sends a message to employers that they can engage in legalized theft below a certain threshold.

The privatization of collections raises concerns about awards being eroded by fees and discounted settlements. Under this system workers may not only get less than what they're owed but they may have to pay a fee to get anything. We think this is an unconscionable way to treat vulnerable employees who rely on the act for protection and justice.

In closing, we endorse the submissions of the Ontario Federation of Labour regarding this bill. We agree that the minister's description of these amendments amounts to a gross misrepresentation. This bill is not made up of housekeeping amendments. It is a full-scale attack on the basic rights that we as a society have long considered necessary for all employees. Therefore, we cannot support the bill and we urge you not to support it either.

The Chair: Thank you very much. You've left us two minutes per caucus for questions, and the questioning this time will commence with the third party.

Mr Christopherson: Thank you for an excellent presentation. I appreciate it, Wally.

You spent a fair bit of time, especially in the beginning, talking about the employee wage protection plan. Of course, you know that this government, after we brought in the first real protection for wages and benefits that are owed workers when there's a bankruptcy, has gutted that program already and has reduced it from \$5,000 to \$2,000, eliminated the ability to claim for termination and severance.

I'd like to know your thoughts on that and also whether or not you see that as further evidence of the fact that with Bill 7, Bill 49, the changes to WCB, the Workers' Compensation Board, the attack on the health clinics, on and on, is clear evidence of an agenda by this government that is not only anti-union but anti-worker.

Mr Dunn: There's absolutely no doubt in my mind. We are definitely not in favour of the cut from \$5,000 to \$2,000, because in our industry it does not take very long to accumulate \$2,000 with wages, especially if you're paid every couple of weeks, with benefits and pensions and holdbacks.

Also, with the cuts to the Ministry of Labour, safety is a major issue in our industry. We now in this area have roughly three ministry inspectors. As you know, the economy in this area is booming right now, for a change, and we're trying our best to keep the safety standards in place, trying to look after our members. As some members on the committee said earlier, "We think everybody is aware of their rights." I can assure this committee that

not everybody out there, especially in our industry, is aware of their rights.

Especially in a boom community, you have a tendency to have a lot of unorganized construction employees. What is happening here is that these employees are mostly new Canadians. They are not aware of the rules, they're not aware of the language and they're not aware of their rights. I have them come to me and say, "I can't collect unemployment." "Well, you should have had that taken off your cheque." "I am not paid by a cheque. I'm paid by cash." You see what I'm saying. This is totally out of control right now, and with any more erosion of the standards I don't know where we're going to go.

Mr Christopherson: Whose side do you think the government's on in all of this?

Mr Dunn: Well, they're definitely, from where I'm sitting, not on the workers' side.

Mr Christopherson: If you listen to the government, they'll tell you that they care about workers. They're on their side. They're fighting for them.

Mr Tascona: Thank you very much, Mr Dunn, for your presentation. Being in the construction industry, you must have some familiarity with the Occupational Health and Safety Act, and probably some familiarity with respect to stop-work orders being issued where there are contraventions of the act. The problem we have is not so much in the enforcement, because I think the employment standards officers by and large do their job. They make a decision; they issue an order. Our problem is collecting the money. What we heard in Toronto this week, and other areas, is that there are some sweatshops out there, that there are bad employers. We're looking at private collection to try to get the money.

One other area might be of consideration where there are across-the-board abuses and we're dealing with bad employers is stop-work orders. Is that something where it could affect more than one employee in terms of shutting down an operation? Certainly they do that under health and safety, to get the point home, saying, "You're not working because you're working unsafely." How do you think that would apply in terms of getting the message home for employment standards?

Mr Dunn: We already have, with our health and safety policies in place, with the construction trades. When we shut down, a lot of times we try to have an employment standards officer or a ministry officer come to check out certain areas of the job sites. We have no problem with shutting down job sites in our own, unionized industry. Most of the employers, if they find out there is a violation, they willingly correct it right away.

Mr Tascona: But employment standards officers don't have the power to issue stop-work orders, though health and safety officers do.

Mr Dunn: We can shut them down, but then we have the ministry come out because the company wants them to come out and inspect these jobs. But the ministry, for the health and safety standards — I mean, if we don't have any inspectors, if you plan on cutting 45 personnel in the ministry itself in that regard, how are we going to use them to deal with some of our claims we have? Why go to discuss for somebody who's an unorganized worker in a small company?

1120

Mr Hoy: Thank you, Mr Dunn, for your presentation. Your comments about the employee wage protection plan are well taken. It also points out that it's imperative that the government discuss with the stakeholders acts, bills or changes in legislation before they actually go forth, so that all the stakeholder comments can be made and situations as you put out will be recognized.

You made a comment at the bottom of page 3 in regard to a "race to the bottom" and that negotiations will become more difficult. I'm led to believe that labour relations in the Windsor-Essex area have been very good over the last few years. Is that correct?

Mr Dunn: Yes, they've improved immensely over the last few years.

Mr Hoy: I just want to make a comment that changes, as you see them, in Bill 49 that would erode those fine relations going into the future would be shameful. I appreciate your comments.

The Chair: Thank you for making a presentation before us here this morning.

WINDSOR WOMEN WORKING WITH IMMIGRANT WOMEN

The Chair: Which leads us to the next group, the Windsor Women Working with Immigrant Women. Good morning.

Ms Sungee John: Good morning. My name is Sungee John and I'm the president of the Windsor Women Working with Immigrant Women. I welcome the opportunity to make this presentation to the standing committee on resources development on the matter of Bill 49. The Windsor Women Working with Immigrant Women, or WWWWIW for short, came together in 1981. The focus of WWWWIW is towards immigrant and visible minority women in Windsor and the surrounding communities.

WWWWIW provides the community with services such as language instruction, in-depth counselling, citizenship preparations, life skills classes, information and referrals, as well as operating as a drop-in centre. WWWWIW also advocates on behalf of isolated women who have a limited ability to communicate in the language of their adopted country.

In the following pages, WWWWIW will briefly outline its concerns over the bill and the obstacles it will present to the ever-growing community of immigrant women and men.

Bill 49 represents a grave setback for workers in Ontario, particularly women, immigrants and people of colour, who make up the bulk of workers covered by the Employment Standards Act. The role of the Employment Standards Act is to provide a basic floor for wages and working conditions for most workers in Ontario. It is the only vehicle of protection for many workers in industries such as food processing, clothing and textiles, as well as domestic workers and home workers.

Bill 49, if passed in its present form, will have a detrimental impact on unionized workers and, in particular, non-unionized workers in Ontario. What the Minister of Labour predicts to be the result of Bill 49 — that is, the encouragement of workplace parties to be more self-

reliant in resolving disputes, making the act more relevant to the needs of today's workplace and to focus the ministry's attention on helping the most vulnerable workers — will in fact prove to be the opposite if Bill 49 becomes law.

Before continuing on, what I've done in this outline is to focus on four areas rather than go through the entire bill. The areas of particular concern to the immigrant community are civil action, maximum and minimum amounts, private collectors and time limitations. I'll continue with civil action.

In this section, Bill 49 proposes two separate options for workers who wish to pursue lost wages. They either seek the help of the Ministry of Labour and accept the new conditions imposed by the bill, such as the maximum amount, which will be discussed further into this paper, or seek the remedy of legal action through the civil courts. Bill 49 allows the claimant only two weeks to make the choice. In attempting to research both avenues and arriving at a decision between the two, the process may take well over two weeks.

For immigrant women and other vulnerable workers, the obstacles are far more daunting. In two short weeks, they must gain access to information, and in many cases the translation of such, not to mention overcoming their trepidation over dealing with the justice system. Furthermore, most immigrant women lack the economic means to hire legal assistance, since Employment Standards Act cases are no longer covered by the Ontario legal aid plan.

I move on now to both the maximum and minimum amounts. Bill 49 proposes to impose a ceiling of \$10,000 which an employee might claim under the act's enforcement mechanisms. Under this proposal, a worker who is entitled to more than \$10,000 in back wages must choose to accept the maximum limit or seek the full amount through civil court, in which case the worker must bear the cost of legal services plus wait patiently for their day in court — a process that may take anywhere from three to six years in the General Division court.

Many workers who make claims against their employers, such as domestic workers and home workers, are owed much more than \$10,000. In the case of non-citizen domestic workers, their precarious position in this country and the lack of support and public education on worker rights often prevent them from filing a claim until their economic situation becomes absolutely intolerable.

In reality, a worker, especially one who is a newcomer, can afford neither the expense nor the time it takes to wait one's turn in our increasingly backlogged court system.

Bill 49 also includes a minimum monetary limit, but the amount has yet to be determined by the minister. In a situation where a worker makes a claim below the minimum, she or he must go to the personal expense of the Small Claims Court. When this happens the government has, in effect, abandoned its responsibility to all Ontarians. It has placed a monetary value over when to intervene to protect a worker's right.

Workers often make repeated, relatively small claims against their employers under the Employment Standards Act. The new system will also encourage small claims because of the new six-month time limitation period.

Together, placing a minimum on the amount a worker can claim against an employer and introducing a six-month limitation period will create a double bind for workers. Workers will have to wait until their claim reaches the minimum threshold to pursue a claim against an employer, yet they will be constrained by the six-month limitation period to avoid going to court. The end result could well be the worker abandoning any attempt to recoup the costs and the employer getting away with cheating an employee.

Next we touch upon the private collectors. Bill 49 proposes to privatize the collection function of the Ministry of Labour's employment practices branch. Too often the failure of the ministry to collect a worker's entitled wages is a direct result of the employer's refusal to pay. Which brings to mind another point: If the ministry had more staffing in this regard, the failure rate would most likely decrease.

With the addition of private collection agencies, a whole new set of barriers has appeared for immigrant women and other vulnerable workers. Collection agencies are driven by the profit motive. They are not in existence out of a sense of public duty. Their interests lie not in the pursuit of social justice and equity, or the protection of workers' rights. They will only protect the interests of their clients up to a certain point — their bottom line.

Moreover, with collection agencies sprouting up in anticipation of the expected business, how will the government ensure that these agencies will abide by a minimum set of standards when ensuring the proper and responsible pursuit of their clients' interests? The door will be open for these collection agencies to encourage the worker to settle upon what the collector feels would be the best deal — to meet its bottom line and balance its own account — rather than the just deal for the client. Private collection agencies will push for a lower claim to shorten the claims process. They will be driven to carve out a profit from the workers' entitlement. Women who are desperate for their back wages will be forced to accept very low offers in the interest of a hasty settlement process.

In the case of immigrant workers they, more than any other workers, face the very real prospect of further exploitation — first through their employer and then through the government's abdication of responsibility. Making the worker pay fees to fight for what is rightfully their due is unconscionable.

Moving on to time limitations, Bill 49 proposes a period of six months from the date of the complaint filed in which employees will be entitled to back pay. Currently, the time limit is two years. The proposed six-month limitation will further victimize the vulnerable worker. As is often the case, a worker will file a complaint only after leaving the employer — after years of employment or hours of unpaid vacation and overtime. If a worker files a complaint while employed, she or he faces the likelihood of retaliatory measures by the employer, and there is nothing in the current Employment Standards Act or in Bill 49 that addresses these situations. The worker will have no other recourse but to take the claim for the remaining amount through private litigation or drop any claim for the remaining amount. Since legal aid is not

available for employment law issues in Ontario, Bill 49 will make it economically impossible for low-income women to afford to make a complaint.

1130

Meanwhile, the employment standards branch has two years from the date the complaint is filed to investigate the matter and another two years to recover the entitled amount from the employer. In this bill, the employee might have to wait four years to collect six months of wages. Of course, the employee will also have to factor in the collection agency's fees.

Because of high unemployment, particularly among immigrant and young women, women workers need at least a two-year complaint period. Many women, such as domestic workers and home workers, endure excessive violations just to keep a job in this economic climate. Currently, over 90% of complaints filed are from employees who no longer work for the employer they are complaining about. Because the government offers no protection for workers making complaints, women often cannot afford the risk of retaliation from employers, so they often hold out at a given workplace until they have the opportunity to take another job. By removing the two-year time limitation, once again the only party that benefits will be the employer.

Finally, in conclusion, the impact of Bill 49 will be the closing of doors for vulnerable workers such as women, immigrant and migrant workers, youth and the disabled. They are faced with abandoning that to which they are justly entitled or facing an expensive and lengthy battle in the intimidating arena that is the current justice system.

In the introduction of Bill 49, the Minister of Labour said it was the first part of a two-phase review of the Employment Standards Act. How can the minister justify such sweeping changes in Bill 49 before the Employment Standards Act review even takes place?

The Minister of Labour said that Bill 49 would help the most vulnerable workers. How is that possible when the interests of the business sector are given priority before the rights of the worker? What, then, is the minister's definition of "vulnerable"? In Bill 49, it seems as if the minister's answer to helping the vulnerable would be lowering the minimum standards currently in place and making the opportunities of exploitation by unscrupulous employers more available.

Windsor Women Working with Immigrant Women strongly feel that bringing in such sweeping changes without taking into consideration the effects they will have on doubly disadvantaged groups will be a setback to the process of attaining an equitable status for immigrant and visible-minority women. We'd also like to endorse the employment standards working group analysis on Bill 49 that was written by Judy Fudge.

The Chair: Thank you very much. That leaves us slightly under three minutes, so I'll say one minute per caucus for questioning. This time the questioning will commence with the government.

Mr Baird: Thank you very much for your presentation; we appreciate it. I have a question on number 4 of your presentation, on the issue of collections. You write, "If the ministry had more staffing in this regard, the failure rate would most likely decrease." I wasn't around

before 1995, but in 1993 the NDP government disbanded the collections branch at the Ministry of Labour and discharged 10 public servants who were performing that function. The rate went from 25 cents to 15 or 20 cents; it's since come back up. Our offices, as MPPs, are constantly receiving calls from constituents, particularly on many working issues, WCB claims. I know one of my colleagues has someone working exclusively on WCB claims. Could you shed any light on why they would have done that? I know you have a tremendous amount of experience as well working for a member in the previous government.

Ms John: You're talking about WCB claims?

Mr Baird: No, no, the disbanding of the collections unit in 1993. I know you were with the government; worked for a member at that time. Did you receive any more complaints when it went from 25 cents down to 15 cents?

Ms John: You're asking about my experiences back then?

Mr Baird: Yes.

Ms John: No, we didn't receive complaints then, at that point.

Mr Baird: Even though the collection rate went down by 10%?

Ms John: What happened in one year I can't say would justify the statistics over a five-year period. That could be an anomaly. I'm not at this point ready to comment on that issue.

Mr Baird: We tried it for a year, doing it internally. I know the previous government made an earnest attempt. They disbanded the collections branch and tried something different. It didn't work. I guess what we're saying is that we don't want to tinker with it. We think we can do demonstrably better than 25 cents on the dollar. Workers have every right to expect 100 cents on the dollar. We hope the private collection agencies will be able to get more money for workers, and of course we'll be accountable for that, because we think it will go up considerably. The status quo, the way we're doing it now — that's the only thing we know — doesn't work.

Ms John: At this point private collection agencies, as I stated in the paper, are profit-driven so their motives are not out of a sense of public duty.

Mr Baird: But they don't make any profit if they don't deliver for workers. They make zero. The companies themselves, the deadbeat companies, have to pay them, which is important to know.

Mrs Papatello: Thank you, Sungee, for coming today to speak on behalf of immigrant women. I only wanted to add as comments to the report something that should be included in a presentation on behalf of immigrant women, and that is the pressures that are brought to bear over the allowance, through this bill, to negotiate certain standards of work like the hours, overtime, paid vacation public holidays and severance pay. By allowing unions to negotiate those items, the most significant impact on non-unionized workers is the need for employers of non-unionized shops or the service industry, whatever it might be, to match those hours, overtime etc. It's that kind of pressure that's now brought on to non-unionized workers. It's clear, as the presenters earlier, those that represent

typically, service industries that have a larger percentage of women and a larger percentage of immigrant women who are negatively impacted by this bill — I thought that would be in this presentation. I would like to make sure that is included.

Mr Cooke: Very briefly, I think it's very important that your presentation that has been made today reinforce to all of us that the impacts of this legislation are not just on workers who are represented by labour unions. While they'll be hurt by this legislation, they're still going to have organizations to fight for them and to speak for them. The most vulnerable people in this province are going to be devastated by this legislation and other acts that have watered down labour legislation in the province.

I wouldn't want you to go from the table without understanding that when the Conservative government talks about only a 25% collection rate, one should understand that a lot of that is dealing with companies that have gone bankrupt and that the only protection the workers under those circumstances had was the employee wage protection fund, which, as you know, this government has absolutely devastated. So workers are going to be hit hard, not just because of this but also because the wage protection fund, which protected some of the most vulnerable workers, has been devastated by this government in another piece of legislation.

The Chair: Thank you for taking the time to come before us here this morning. We appreciate it.

**WINDSOR-SANDWICH
NEW DEMOCRATIC PARTY
RIDING ASSOCIATION**

The Chair: That takes us to the last presentation of the morning, the Windsor-Sandwich NDP Riding Association, which I believe was originally filed under Mr Milne's name himself. Please proceed.

Mr Tom Milne: Good morning. I'm Tom Milne. I'm here representing the Windsor-Sandwich New Democrats, and I'm happy to be here in this capacity. The time restrictions here don't really allow me to speak to every aspect of Bill 49, so I'm going to try and focus my comments this morning to the bill as it relates to workers in non-unionized workplaces and try to leave some time for some questions.

Let me first speak to the enforcement of the Employment Standards Act for non-unionized workers. This bill contains six major changes to the act with respect to enforcement. I'll step through them now if I can.

First of all, the shorter time limits for filing a claim: Currently the act allows a worker two years to file a claim. While this may seem like a long time, what about workers who stay in a job where their rights are being violated because they're terrified of the prospect of being without that job? With unemployment as high as it is, they can't risk the possibility of getting a bad reference from their current employer, so they need to find a new job before they make the claim. No one should have to make a choice between their job and their rights, and two years is a reasonable period in which to file a claim.

1140

Next is a shorter investigation period. This bill only allows investigations to scan back six months of a

worker's history from the time a claim is made. This would allow an employer to violate the act for a year, two years, maybe more, and only be held accountable for the previous six months.

The \$10,000 cap on claims: Currently there is not a maximum on a claim amount and Bill 49 will set a \$10,000 cap on the amount a worker can claim for violations of the act.

Next is a new minimum claim amount. Bill 49 allows the minister to set a minimum claim by regulation. Depending on the amount of this minimum, it could well have the effect of employers keeping their violations under the minimum in any six-month period and thereby avoiding any legal penalty.

Access to justice is denied for low-wage earners. A worker who files a claim at the Ministry of Labour for severance and termination pay is precluded from bringing a civil action concerning wrongful dismissal and claiming pay in lieu of notice which exceeds the statutory minimums. The effect of these amendments is that those workers who have chosen the more expeditious and cost-effective path of claiming through the ministry will have to forgo any attempt to obtain compensation through the courts. Legal proceedings are notoriously lengthy and prohibitively expensive for many, even though they may be entitled in common law to more than a statutory minimum under the Employment Standards Act. This government has recently stopped providing legal aid certificates for employment-related matters. This bill will force low-income workers who are owed more than \$10,000 to file claims through the act and forgive the balance owed to them.

The last aspect is the use of private collection agencies. Although the Ministry of Labour is relatively weak in the area of collections, this bill's provisions for the contracting out of collection services presents other major problems. These agencies will have the authority to encourage settlements between workers and employers who owe them money. These settlements are generally negotiated on a cents-on-the-dollar basis. Collection agencies should not be given the power to amend orders made by the employment standards branch. This undermines the authority of the act and the Ministry of Labour.

These are the six areas. It absolutely amazes me that any government would somehow make it difficult for workers to recover money they actually worked for.

I have attached some examples here. I was going to go through all six of them, but I'm not, because I don't want to run out of time; I'll leave some time for questions. I'm just going to pick up on a couple of them.

On page 4, at the top, the second one, is a case of a worker we'll call Ms F, who was a cashier. Ms F worked for a major grocery store for 13 years and was terminated from her employment without cause. She did not receive any notice of her termination or termination pay in lieu of notice. Pursuant to the Employment Standards Act, the cashier was owed eight weeks of termination pay as well as severance pay. She filed an employment standards claim with the Ministry of Labour for approximately \$5,000, which she was awarded. This worker filed her claim almost a year after she was terminated. Under Bill 49, her claim wouldn't have been allowed, as the six-month time limit for filing claims would be imposed.

I'm going to skip to the last one, which is on page 5, item 6, the case of Mrs J, who was a domestic worker. Mrs J worked for one employer for 17 months. She routinely worked 15- or 16-hour days from Monday to Friday and very long hours on Saturdays and Sundays. Her employer did not pay her on a regular payday. She did not receive a statement of wages. At the end of her employment with the employer, she was owed a month of unpaid wages. The total amount owing for this period in overtime pay and unpaid holiday pay was almost \$33,000. The employer also kept and controlled all her documents, including her passport and her bankbook. He only released her documents after she complained to a counsellor at an agency for domestic workers. Ultimately, after two years, this worker was awarded \$23,000 in overtime and unpaid holiday pay. Bill 49 would reduce this worker's claim to less than \$10,000, both because of the \$10,000 cap and because of the shortened investigation period.

The source for those examples is Parkdale Community Legal Services.

We can argue forever about what level of compensation a given worker should receive for doing a given job, but surely, whatever that level is, we all agree that workers should be paid each and every cent of that compensation. Anything less than that is theft.

I want to move to the more philosophical question of what the government's proposing here and its relationship to unorganized workers in Ontario.

Apart from a few positive amendments like vacation entitlements and seniority accrual during family-related leaves, any reasonable person would agree that the overall effect of Bill 49 will be a transfer of rights from workers to employers. Members of the government will argue that this legislation is necessary to make Ontario more competitive in the area of attracting new investment and retaining current investment. I truly believe that this government will defeat its own purpose by passing this bill.

If nothing else, this legislation will increase the desire of unorganized workers to join a union. Perhaps that explains why this government chose to rewrite the Labour Relations Act, making joining a union more difficult, prior to introducing Bill 49. Nevertheless, more and more workers will be looking for something or someone to give them some measure of protection and justice in the workplace. The current act, apart from falling short in some areas, at least provides a minimum standard that Ontario workers can count on. If this government chooses to proceed with passing Bill 49, that feeling of having a standard basic set of rights will disappear. This will cause nothing short of labour relations chaos in unorganized and organized workplaces alike, and I don't see this in any way creating the climate for investment that this government claims to be fostering.

The message I'd like the government members of the committee to bring back to cabinet on my behalf is simply this: Those who work in the unorganized sector of our economy are among the poorest and most vulnerable people in our province. These folks have no workplace representatives to help them. They have no organizational

resources to assist them. You, the government, are all they have. You're it. You're the only game in town for these people. If you choose to make them feel abandoned, do you honestly believe these workers will just say, "Oh well, there's nothing we can do"? If you do, you're mistaken. They'll realize that there's an alternative and they'll pursue it. Is this what their employers want and is this a favourable climate for investment?

These workers need you, the government, to bridge the gap between their interests and the interests of their employers. This bill, I believe, makes that bridge impassable.

By proceeding with Bill 49, you'll be letting those workers down. I ask that you reconsider this course of action and stop your pattern of trying to fix our province's problems by attacking the poorest and the most vulnerable in our society.

The Chair: Thank you. That leaves us one minute per caucus for questioning, and this time the questioning will commence with the official opposition.

Mr Hoy: Thank you very much for your presentation. With very little time here, I want to make a comment about your comments in regard to the minimum claim amount. I suspect that the government is thinking about trying to deal with what could be categorized as frivolous claims. My background is one of agriculture. Within an act that pertained to the agricultural sector there were people concerned about minimum claims and/or frivolous claims. There was a number set out that maybe \$500 would be a minimum claim amount; it was discarded because, for a family of four, \$500, it was suggested, could be their groceries for a month.

When one is talking about minimums, we have to be very careful. However, there's a difficulty in the frivolous claim area as well. I just give you that example. I appreciate your comments.

Mr Cooke: Thank you, Tom. I'm not a regular member of this committee but I appreciate the fact that in the presentation you're giving examples of what can happen to individual workers.

I guess one of the things that has intrigued me this morning was the presentation made by Mr Charette when he said that the six months doesn't really matter versus the two years, that this is a society where everybody knows their rights and that those kinds of limitations won't have an impact on anyone. That's certainly not been my experience, but you've been involved in the community for a long time in an advocacy role as well, and I just wanted to get your read on what your experience has been, whether everybody has read up on legislation and whether the six-month limitation will have a dramatic impact on people, in your recollection of cases that you've dealt with over the last number of years.

Mr Milne: I've had some experience of my own. My younger sister had a problem working at a convenience store where the chap who was running the place said: "Listen, I'm kind of short this week. How about if I toss you 100 bucks out of the till?" She called me and told me about this and I said: "The red light should be on. This is a problem. This guy's got a problem." She had no idea that she was entitled to do anything about it. She

thought, "If I accept this offer of this \$100, I suppose, then that's what I'm getting paid this week."

On my own I started looking through the act at that time; this was several years ago. That comes into Mr Hoy's question about the minimums too. She was only looking at \$400 or \$500 in unpaid wages, which she was able to recoup. Under this situation, maybe she wouldn't have been able to. That's the example I can think of.

At my workplace, most people, because it's a unionized workplace, take the Employment Standards Act relatively for granted; this is a basic floor of rights that they start at and try to move up from, I suppose you could say. But in terms of knowledge of the act, to say, "This is how I appeal, and this is how I do this" — I mean, they're doing well to understand their own collective agreements in terms of the complications of arbitration and all those kinds of things, let alone to have to look at another act.

Mr Derwyn Shea (High Park-Swansea): Thank you, for the illustrations particularly. Certainly in terms of Ms F, it will be of some comfort for you to know that where an employer continues to violate standards under the act repeatedly, a one-year limitation period may apply. That's of some comfort to Ms F. That deals with 82.34.

There are a couple of questions I'd like to ask you, arising out of other comments you made. Should any classes of employees, in your opinion, be exempted from the Employment Standards Act?

Mr Milne: Any classes of employees?

Mr Shea: Should any groups of employees be exempted? Right now there are a number of exemptions. Should that continue or not, in your opinion?

Mr Milne: I don't have in front of me who is exempted and who is not. I didn't know my presentation was leading that way.

Mr Shea: Okay. In terms of the increasing activity of home work — for example, the city of Toronto recently did its studies that one in five are now working in homes. Do you advance the cause of extending the Employment Standards Act into the home setting?

Mr Milne: Yes.

Mr Shea: In terms of bankruptcies, in terms of what you and I might say were bad employers, the federal government has simply refused to come to grips with the Bankruptcy Act and how to give increasing comfort to employees and indeed to the province where there are outstanding costs. How do you think we might move in that direction, where some of these bad businesses might hide behind the Bankruptcy Act and then suddenly they emerge again after they've dealt with employees? How do you deal with that?

Mr Milne: First of all, you're right: The federal government has a responsibility at least to bump up the order of priority in terms of where the employee falls under a bankruptcy. I think there's an obligation for them to move in that direction, at least to move them up the scale somewhat and not leave them where they are. I understand that's a problem for collections, when a bankrupt employer says, "Listen, this is it," and then you have a creditors' meeting, and who is at the bottom of the priority list? The people who were trying to help this company make a profit, that's who. Yes, I'd agree with you that they've got to move there.

The Chair: Thank you. We appreciate you taking the time to make a presentation before us. That concludes our morning session. The committee stands recessed till 1 o'clock.

The committee recessed from 1153 to 1304.

HOTEL EMPLOYEES RESTAURANT EMPLOYEES UNION, LOCAL 75

The Chair: Our first group up this afternoon is the Hotel Employees Restaurant Employees Union, Local 75. Good afternoon. Everyone should have their brief. Just as a reminder, we have 15 minutes for you to divide as you see fit between presentation time and question and answer period.

Ms Deborah Taylor-McCall: Good afternoon. My name is Deborah Taylor-McCall. I am a business rep and office manager for the Hotel Employees Restaurant Employees Union, Local 75, in Windsor. With me is Kai Lai, a business representative for Local 75. In the same representative capacity he also sits on the executive board of the Ontario Federation of Labour as vice-president.

HERE Local 75 represents approximately 7,000 members employed in the hospitality industry, exclusively in hotels, restaurants and cafeterias of all descriptions and sizes in the province of Ontario.

The hospitality sector workforce occupies a niche in the service sector industry that has some broad characteristics. We are, by and large, an immigrant community; most workers are recent arrivals to Canada. A substantial percentage of the workforce is visible minorities. Most have a language of origin other than English and, due to the average compensation for this sector, many parents have to work at two jobs to cover basic expenses. The most significant characteristic within this demographic terrain is that our community of workers is among the lowest paid coupled with the longest hours of work in order to attain that level of pay.

We at HERE anticipate that the greatest negative impact of Bill 49 will be among those workforces sharing some of the characteristics I've just described. We predict with realistic alarm that the greatest fallout will happen over our demographic terrain.

Mr Kai Lai: We therefore appear before this committee with a great deal of trepidation over Bill 49. In our opinion, this bill has negative ramifications for all workers in our employment sector, be they unionized or non-unionized. We feel it is important for this committee to note that amendments to the current ESA are anticipated to be negative for all workers in our sector. Consequently our remarks stem from the obvious concern over our membership but extend to the working conditions in the entire sector as a whole.

In introducing the Bill 49 amendments on May 13 this year, the Minister of Labour claimed she was making housekeeping amendments to the Employment Standards Act. She described Bill 49 as "facilitating administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures."

We in the Hotel Employees Restaurant Employees Union see it in a very different light. "Facilitating administration and enforcement by reducing ambiguity,

simplifying definitions and streamlining procedures" may be called housekeeping, but in our opinion the definition is a mere euphemism for radical restructuring of working conditions towards an unfair and unproductive level. This creates the equivalent effect of maintaining hotels for guests while creating hovels for workers.

By lowering the floor of any part of the current ESA, the government places all those in the demographic terrain we have just described in a more precarious position than currently exists, be they union or non-union.

The truth is that what was presented as minor technical amendments contains substantive changes. These changes clearly benefit employers and diminish access to fairness for workers, particularly the most vulnerable in the workforce, many of whom, incidentally, are unionized within HERE's jurisdiction.

The most preposterous assumption of this bill is that equality before the law necessarily means equality of resources to enforce that law. Legally the bill may provide for a process of apparent fairness, appeal and compensation. However, those workers in our demographic terrain who may claim a violation do not have the resources to get back what was owed to them by the very employers who violated the act in the first place.

I can safely say to the minister and to this committee that HERE exists in an industry where employers in some hotels and restaurants habitually cheat and exploit their workers by ignoring the ESA with relative impunity. Our frustration as a union is not with dismay that deadbeat bosses exist, but anger that there are insufficient resources to bring them to light and to stop these tendencies.

1310

I invite any member of this committee to go on a one-hour tour with our staff in downtown Toronto or Windsor and to be introduced to those employees in our sector who have on the one hand a reputable community presence but who simultaneously violate the current ESA with impunity. Amendments such as those envisioned by Bill 49 would only act to reinforce and perpetuate this type of behaviour.

One of the most glaring provisions that would permit further erosion to workers' rights while encouraging deadbeat behaviour is the cap on the maximum claim allowable under Bill 49. The maximum claim of \$10,000 would apply to amounts owing of back wages and other moneys such as vacation, severance and termination pay. The problem with implementing such a cap is that workers may be owed more than the \$10,000. Those who have been deprived of wages for a lengthy period of time are the very employees who do not have the means to hire a lawyer and spend the time it would take to settle the case. In effect, this provision would encourage the worst employers to violate the most basic standards while at the same time compounding the problems for those workers with meagre resources.

Bill 49 also gives the minister the right to set out a minimum amount for a claim through regulation. Workers who make a claim below the minimum, which is as yet unknown, will be denied the right to file a complaint or to have an investigation. Dependent upon the amount of this minimum, it could well have the effect of employers

keeping their violations under the minimum in any six-month period and thereby avoiding any legal penalty.

The other contribution to reinforcing substantial employer abuse in our sector is the limitation period of claims. The proposed amendments in Bill 49 significantly change a number of time periods in the act. The major change is that employees will be entitled to back pay for a period of only six months from the date the complaint was filed instead of the existing two-year period.

This restriction on time will penalize vulnerable workers who often find it necessary to file a complaint after they have severed their employment relationship either by quitting or changing employers. This is a substantive restriction particularly for non-unionized workers who have been denied their statutory rights for a longer period of time and cannot afford a civil suit.

Workers who fail to file within this new time limit will have to take their employer to court in order to seek redress. The burden of cost will also have to be borne by the employee in such circumstances, as the Ontario legal aid plan has been scaled back and no longer covers most employment-related cases.

Finally, specific to our unionized constituency, we want to clearly state our position on flexible standards now. Even though the minister stated that flexible standards will be reviewed only in the second phase of the government's reassessment of the act, we want to go on record that anything less than the current ESA for any worker is undesirable.

With regard to organized workers, the bill contains a fundamental change to Ontario labour law by permitting workplace parties to contract out important minimum standards. Bill 49 allows a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay if the contract "confers greater rights...when those matters are assessed together."

Employers would be free to disregard the previous floor of rights and have the opportunity to attempt to trade off such provisions as overtime pay, public holidays, vacation pay and severance pay in exchange for increased hours of work. How one is to weigh or measure whether or not a tradeoff of this kind confers greater rights is left unstated. This proposed amendment will allow employers to put more issues on the bargaining table which were formerly part of the floor of legislated rights and will make settlements more difficult.

It will also enable employers to roll back long-established, fundamental entitlements such as hours of work, the minimum two weeks of vacation, severance pay and statutory holidays by comparing these take-aways to other unrelated benefits which together can be argued to exceed the minimum standards.

We as a union also find irony in Bill 49 in that it contradicts this government's commitment to competitiveness by shackling efficient and expeditious labour relations. Bill 49 would force both labour and management to extend the parameters of collective bargaining to include aspects of jurisprudence of employment standards in negotiations. This will add sufficient burden to both parties that the very notion of competition and efficiency is contradicted.

On our tour of deadbeat bosses we can also lead you to the groans of human resources departments which are preparing to further stagger under the responsibility that the government will abrogate in implementing Bill 49. This responsibility will be foisted not only on workers, but on management as well through the negotiating process.

In conclusion, to define Bill 49 as housekeeping is to attach an almost benign and avuncular quality to it. Bill 49 in fact fragments a legislative structure that created an equitable floor of employment rights which was not only feasible but also socially and economically beneficial. Bill 49 erodes not only significant and essential rights to workers; ironically, it also detracts from the efficiency of business.

We at HERE are not averse to fair and thorough debate on the type of employment legislation that will best serve us into the next century. It is for this reason that we vehemently urge the minister to withdraw Bill 49 and enter into respectful and meaningful discussion with representatives of both organized and non-organized labour. We submit that respectfully. Thank you.

Mr Christopherson: Thank you very much for your presentation. I want to focus on your comments about the six-month filing period rather than the two years. This has become a point of real difference between evidence we're hearing and what the government claims. The minister stated in her comments when we kicked off these hearings, "Filing a claim within six months will result in speedier resolution of complaints and allow employees to receive the money owed to them more quickly," as if to suggest that this is somehow some big improvement for employees.

Further, we had a representative of the chamber of commerce in Kitchener who said, "This will prevent an employee from sitting on his can and mulling it over," as if somehow there's a benefit to employees by way of process, some employer groups suggesting that employees are playing games with this. I note that you clearly state that many of the vulnerable workers have to wait because they find it necessary to file a complaint only after they've severed their employment relationship. The stats show that indeed 90% of the claims are made after a worker leaves a workplace situation. Would you please expand on what your members face and why they're afraid to file while they're still working at that place of employment?

Mr Lai: I'll try to make it brief and I'll give two answers to that question, one dealing with non-unionized employees and one with unionized employees. Let me start with unionized employees. The issue of any kind of legal claim, be it through grievance, as we seem to be heading towards, or through the courts, is that it takes a substantial amount of time and monetary investment, not to mention the fact that most workers in what I describe as our demographic terrain find this entire process to be a terrifying one. For these people to seek legal aid, to go through the entire process and to face only a six-month period where their claims would be valid is something that would deter almost everybody I personally have come across in what I call our demographic terrain.

1320

Mr Tascona: I just want to point out a couple of areas in the bill you haven't touched on. For ongoing violations the time limit is one year. Also, the \$10,000 cap does not apply where there's reinstatement involved under the act for violations of pregnancy leave and Sunday work laws.

One area that I want to touch on with you is that it is quite standard in collective agreements for unions to insert provisions with respect to human rights. What they do at that time is have the grievance procedure to ensure the employer follows the human rights process. I imagine you're familiar with that. Unions have willingly taken on the responsibility to ensure the human rights and protection of their workers, so why wouldn't it be proper for the unions to take the role under the Employment Standards Act when they do it for human rights?

Mr Lai: I like that question because I'd like to serve as devil's advocate and answer it from the point of view of an employer. When employers sit across from me at negotiations or arbitrations or mediations, one of the issues that is as large for them as it is for the union is the backbreaking and time-consuming work they get caught up dealing with as far as legislation, contracts and so forth are concerned. The clear opinion they express is, "I wish we didn't have to do this." While unions would not say, "We don't want to deal with this at all," I think that from a business point of view it would be preferred if the entire process were speedier. What heads of human resources departments are telling me is what I put forward in this brief: They are just very afraid that added to their responsibilities of running an organization will be this entire caseload that is now being covered under the ESA.

Mr Tascona: They have to comply with the laws anyway.

Mr Hoy: Thank you for your presentation. I want to ask some questions that relate to wages your employees actually receive. Would it be fair to say that many of the waiters and waitresses you represent, or non-unionized waiters and waitresses, would make minimum wage, or some slightly above that figure?

Mr Lai: Yes, it would be fair to say that.

Mr Hoy: Does it occur that tipping to the waiter or waitress can be shared with the employer?

Mr Lai: That's a huge question I've gone through a lot in negotiation, and I don't think I could give it a clear answer here, just because of time constraints. Let me just say that the Employment Standards Act deals with minimum amounts of compensation, and it is looking strictly at this that we view with great alarm changes to the act. I'll just conclude by saying that the percentage of people who work in our union who exist with gratuities as part of their compensation is about 10% of our workforce.

Mr Hoy: My line of questioning is such that there are people who believe that waiters and waitresses make large amounts of money based on tips; therefore, the minimum wage is something that doesn't have to be discussed very often. But of course they pay income tax on those tips, so I think the assumption that the minimum wage floor is not required because of the large amounts of money they're making in tips is not relevant to the conversation about the minimum wage standard. Correct?

Mr Lai: Here's a very quick answer to that, sir: If you ask me whether I'm in support of the business practices of the Screaming Tale restaurant, I'll just say that we clearly are not.

The Chair: Thank you very much for taking the time to make a presentation before us here today.

BUSINESS AND PROFESSIONAL WOMEN'S CLUBS OF ONTARIO

The Chair: Which takes us to our next group, the Business and Professional Women's Clubs of Ontario. Good afternoon.

Ms Robin Dragich: Good afternoon. My name is Robin Dragich and I am representing the Business and Professional Women's Clubs of Ontario today. The Business and Professional Women's Clubs of Ontario is a non-sectarian, non-partisan, non-profit organization which promotes the interests of working women, fairness in the workplace and the removal of discriminatory practices and barriers that prevent women from achieving their potential in the workplace. It operates within the Canadian Federation of Business and Professional Women's Clubs towards the improvement of the status of women in all phases of society, especially in business, the professions and industry.

Changes that are being proposed under the Employment Standards Act will have long-range ramifications for working individuals in the province of Ontario, something that is of great concern to our members. Decreasing the amount of time allowed for filing a complaint, capping award settlements, forcing employees to make a decision on whether to file a grievance or bring a civil action to court, and bringing in outside collection agencies put vulnerable workers in a position of not reporting employers who take advantage of their employees.

The Employment Standards Act sets minimum standards to protect employees and sets down the ground rules concerning minimum wage, vacation pay, overtime pay, equal pay for equal work, hours of work, pregnancy and parental leave, and notice of job loss. Employees who are the most vulnerable are in workplaces where there is no protection of a union and are least able to file a formal complaint without the fear of some reprisal.

Government should be willing to enforce the laws it sets in place without bargaining with outside agencies of contract.

Limitation period changes are major to us. Limiting the amount of time that an employee has to bring a grievance against an employer puts the employee in a very tenuous position if he or she is dependent on the job. This goes to a question that was asked earlier. If you are in a job with a bad boss who is violating the law, it could mean reprisal during their period of employment.

Routine inspections a few years earlier revealed that 94% of employers were found to be in violation of some portion of the Employment Standards Act in their positions. With the elimination of 33 possible positions in the department, and 12 next year, the caseloads for those remaining would certainly restrict the ability of inspectors to pursue investigations that are a result of complaints filed and do away with routine inspections for those employers who had previously contravened the law.

Another area of concern is the capping of claims. Even though the number of claims exceeding \$10,000 may only be minimal, the fact that awards do exceed this limit should make the ministry attentive to the fact that employees' rights are being violated. Any amount legally owed should be paid in full if the employer is found to be in contravention of the law.

The Ministry of Labour's own statistics have found that fewer than half of the claims made are collected. We need more officers collecting claims to protect the rights of workers.

The collector of the order is now allowed the discretion of collecting up to 75% of the claim if both parties so agree. This gives some opportunity for bargaining, which could be detrimental to the employee. This section is appalling, and we are quite disturbed that the minister would even allow this section to be included to give any further bargaining powers to employers to take away what is rightfully owed to any employee, especially for those most vulnerable in the system, who would be willing to look at this as an option to get their money even quicker if they were in dire need. Not only does the worker have to go through a long process already to receive their money, but then they have their rights further eroded by allowing this to happen. To ensure that cases are completed in a timely manner, we feel that the ministry should have complete control of the process from start to finish.

By upholding law and order, one of the positions taken in the election platform of this government, everyone benefits. For those who break the law through misuse of trust in employer-employee relations, only a swift justice administered by the Ministry of Labour's own people can protect those most vulnerable in our society, to collect what is duly owed them for the work that they performed outright and without further negotiation.

I would also draw your attention to the resolutions of the Business and Professional Women's Clubs of Ontario, which have included a wide range of resolutions that have been brought forward to the attention of various governments over the last few years.

This is a summary of my brief. I would take any questions now. I would like to apologize. Susan Lescinsky was called out of town, so I'm hoping that I will be able to answer your questions; if not, we can submit the answers in writing at a later time.

1330

Mrs Barbara Fisher (Bruce): Thank you for coming today and presenting your concerns to our committee. I do have a question, however. I see that in your brief you say that 82% of single-parent families are actually led by women. While we were in Toronto, we were presented with a case of an employee who was in an unorganized labour situation, telemarketing was her profession, and she made a very strong plea to us on the basis of something I'm going to explain to you and then ask you for an opinion on.

She had been employed. Her employer owed her over 180 hours, a single mom of three. Government has had the opportunity for the past year and a half to act on her behalf and has not been successful in doing so. I don't want to get into the partisanship of the fact that some

people have laid off employees in that ministry in the past and some are doing it again today. Her plea to us, in all sincerity, was that there has to be a better way of collection and it needs to be done faster. "I can't wait two years," is what she, almost crying, said to us, so I'm not so sure that the six-month appeal process to get it on the table for somebody in such need is wrong.

However, I will ask this question. In her desperation at the end, she said to me: "Please just help me. I need my money." She was not at all averse to private collection, given that government hasn't been able to do a good job for her in the past. Could you please explain to me why you might be averse to that?

Ms Dragich: We believe that the government should be doing a good job at that. These are the minimum standards that are set out by government, through Bill 49, the Employment Standards Act. They should be able to do a good job. I believe that it's the minimum that has been proposed, that's been put forward. They should have officers of the department that can be as efficient as private agencies. To us, government workers should be as efficient as private workers. The rhetoric that we hear outside that private business can do better than government, we believe that government should be doing as well as private business.

Mrs Fisher: But we know that 25 cents on the dollar isn't good enough. All three governments, everybody is guilty; all of us are guilty of not being able to do it. Given that history, why are we now to think that this hypothetically is going to correct? It's not going to. We had collection agencies; they weren't doing it. We've had the opportunity, through all levels of government, to make the case and repair the situation.

I personally believe, for whatever it's worth, that we ought to give this a try and maybe not be so critical of the fact of whether it's private or government; that's not the issue. Collection is the issue. The person is entitled to 100% of what's owed, and we're going to make an effort to try to make that change, to be better than 25 cents on the dollar.

Mr Hoy: Thank you for your presentation today. I noted in your remarks the eliminating of 45 inspectors. I agree with you that it seems to fly in the face of enhanced enforcement and collections. I would let you know that the budget was cut by 26% as well.

Our job as legislators is to listen to people and to observe. You mentioned pay equity at the end of your presentation as one of the issues outstanding beyond Bill 49. I walk to the Legislature each day and I pass a number of coin-operated news-stands where newspapers are sold, a number of different publications. I have never seen anyone stop and buy a paper. However, there was a headline where the government was thinking of changing the pay equity law as it applied most pronounced to women. People were stopping and looking at the headline. It told me right away — I didn't need to know this by their stopping there — but in the hustle and bustle of people getting to the subway station, getting to their workplace, they were stopping and reading that headline, and it signalled to me that this was going to be a big issue. The government is wading into quality-of-life standards in a way that we haven't seen before in this

province. I appreciate your submission today and I thank you for being here.

Mr Christopherson: Thank you very much for the presentation — two presentations in a row that profiled in a priority way the limitation period and the fact that you can no longer claim beyond six months. If you heard the previous presenters, they represent mainly visible minorities, new Canadians, people whose first language is not English. You represent women and their interests in our society and you state in here, "Individuals who are stuck in a job with a bad boss with nowhere to move would less likely bring a grievance against a boss who is violating the law, if it means any sort of reprisal during their period of employment."

We know that over 90% of all claims are filed after that worker leaves that place of employment. The government just doesn't seem to get it. We need to emphasize over and over, and I'd like you to expand on it: What are the circumstances vulnerable workers — women, visible minorities, no union — are facing when they are having their rights abused? What are the circumstances? Why don't they claim right away? Why do 90% wait until after they have left the employment of that particular workplace? Why do you think that is?

Ms Dragich: We would concur with the previous presenters that it is fear. It is sometimes lack of knowledge as to how the system would work. It is desperation: They need the employment. They cannot jeopardize in any way, without someone to support them, such as a union, such as an Ombudsman of some type for this area — they feel that they need to go to another job and be secure in that job before they make a claim against an employer because they cannot afford in any way to be out of work, to not have that income coming in. Those people we are talking about are most vulnerable, are working in the positions where the Employment Standards Act is most relevant. Many companies present and offer more than the Employment Standards Act. But in those positions where the Employment Standards Act is the minimum a worker is getting, they are afraid to lose their job, so they wait until they leave their position and are secure again to file a claim.

Mr Christopherson: Fear and desperation are the key issues.

Ms Dragich: We believe that.

The Chair: Thank you very much for taking the time to appear before us today.

UNITED INJURED WORKERS' GROUP — WINDSOR

The Chair: That takes us now to the United Injured Workers Group — Windsor.

Ms Eunice Lucas: "You know, when I was growing up my mom told me if I went to work and worked real hard, I would be able to get a job, support my family" —

The Chair: Excuse me. Could you sit at the microphone so that Hansard can record it?

Ms Lucas: I am, sir. Give me time, please. I didn't know we had a protocol, because people over here are talking, reading newspapers, getting up and walking around.

The Chair: They are not speaking into the microphone.

Ms Lucas: I'm going by protocol, sir.

The Chair: Please sit and speak into the microphone.

Ms Lucas: This is the way I'm presenting my thing.

The Chair: Ma'am, your words won't be recorded for everyone to read.

Ms Lucas: That's fine.

The Chair: You don't want the public to hear what you have to say?

Ms Lucas: Can you hear me? My public can hear me.

"I watched my dad all the time I was growing up. He worked real hard, sometimes between 12 and 14 hours a day, to provide for my mom and my brothers and my sisters. We always had food in our tummies, a roof over our heads, and when dad got a bonus we got new clothes and store-boughten pizza.

"I went to a school called a trade school because I'm not real good in arithmetic and spelling. At this trade school they taught me how to build houses, and it felt good to pick up a hammer and make my hammer sing. It sang when I built houses and I put roofs up and I helped protect people from the cold and the weather.

"In school I met my Bertha. She is the most beautiful thing I ever saw, and we planned to get married. I got a job with my boss putting shingles on roofs. My boss told me I should be able to do about 40 bundles a day and he would pay me \$4 a bundle to do it. But remembering what my mom taught me, that if I worked real hard my boss would pay me a nice day's pay, I worked real hard and I got up to making 50 bundles a day. He was so proud of me he said, 'Henry, I'm going to give you \$5 a bundle because you are such a good worker.' Wow, my mom was right. She told me that if I worked real hard my boss would appreciate me and I would get a good paycheque.

1340

"Then I got my paycheque. The end of the month came around, my paycheque; it just didn't seem right. The numbers just didn't seem right, not knowing arithmetic and all that, but my Bertha, she's so smart she made me write down all the bundles I had done every single day. So I took my paycheque home, gave it to Bertha and she figured my boss only paid me half of what he owed me.

"So I took my paycheque back to my boss and he said, 'Well, I can't pay you until the people who own the houses that you shingled pay me.' I've got to tell you I didn't go to work to risk anything. I went to work to work for my boss. He was the one who wanted to take the risk. He was the risk-taker, what my Bertha calls the entrepreneur. I'm just a labourer. I didn't want to get hurt, so I kept working. But now it's been six months, and I still haven't seen the rest of the money that my boss owes me. Bertha says now it's up to \$12,000.

"And you know what else my mom's taught me? That I'm supposed to pay attention when people talk to me; I'm not supposed to look away and gab with somebody else. I'm supposed to pay attention and really look like I'm honestly wanting to know what the person is saying. My Bertha tells me that I have to go to the labour board. I'm really scared, because what if my boss finds out and

he gets mad and then I get fired then I don't have a job to go to at all?"

I am Bertha, the wife of a man whose ethics are impeccable when it comes to work. My husband is very confused right now. He feels that his boss has betrayed him. My husband gets up, rain or shine, goes to work sometimes not even coming home until dusk. He is exhausted. He never misses a day's work. He is honest to a T and yet his boss doesn't pay him.

Henry and I decided I should take his work records to the labour board and see what his rights are. The lady behind the counter said that it's not right, what his boss is doing, but Henry can only sue for a maximum of \$10,000. Some guy by the name of Mr Mike Harris says so. The lady also said we have to pay a lawyer to get what is rightfully ours. A lawyer charges \$200 an hour, and with what Henry brings home we can't afford a lawyer for that kind of money. It just doesn't seem right that we have to sue the boss for what is rightfully ours.

There are three links in the chain that built our country: the worker like Henry, employers and politicians like Henry's boss, and finally the provinces joining together in Confederation to form a union that we call Canada. There is something wrong with one of the links in this chain, and I am sure it's evident which one is defective.

Please raise as much opposition as you can to the changes of Bill 49. Say no to Harris's slash and burn and cuts to the working person. I thank you very much.

The Chair: Thank you for your presentation.

We move to the Sheet Metal Workers and Roofers, Local 235. Oh, forgive me. Apparently it was not faxed to the clerk prior to preparing the agenda.

CANADIAN UNION OF POSTAL WORKERS

The Chair: Ms Carroll will be presenting instead on behalf of the Canadian Union of Postal Workers. Good afternoon. Again, 15 minutes are yours to divide as you see fit between presentation or questions and answers.

Ms Cathy Carroll: The Canadian Union of Postal Workers is a national union with a majority of our members falling under the federal guidelines and jurisdictions. However, we represent cleaners in the post office as well as, until recently, a small group of cleaners in the disaster area out of Windsor.

The previously noted groups plus other workers in delivery and communications-related fields maybe responded to provincial law and regulations. Each successful organizing campaign such as the post office cleaners brings a new group of members under that provincial legislation.

When the Honourable Elizabeth Witmer introduced changes to the Employment Standards Act, we, like many other unions in the province, reacted by scrutinizing what was being described as "minor and technical house-keeping alterations."

We have no faith or trust in the present government in that what they propose will benefit the workers in Ontario. Indeed, after reviewing what was tabled, we see that the end result, after the dust has settled, would be an eventual deterioration of all Ontario workers' standards of living.

Though the majority of postal workers are federal, we live, we eat, we breathe and we buy in the province of Ontario. As well, many of our members have spouses and children who work in Ontario and fall under the provincial standards. If you look at the Canadian statistics, you will see that the majority of family units have at least two incomes. What affects our families affects us. If they suffer, we suffer. If they are stressed, we are stressed. If we are stressed, that's when productivity suffers, and if productivity suffers, our employers get angry. With over 20,000 postal workers in the province of Ontario, which is one third of our total workforce throughout Canada, I believe Canada Post Corp should be worried as well.

On behalf of my members and their families, the Canadian Union of Postal Workers is opposed to Bill 49. These changes benefit only those individuals who have money and the cheats of this province. Much of our vocabulary is peppered with corporate terms such as "contracting out," "outsourcing," "downsizing," "fiscal responsibility," "business plans" and "tax breaks." I can see adding to this "legislative boss cheats."

I had planned to bring some members or their spouses to relate their own experiences, but they could not be here. Some are too busy trying to survive the 1990s pressure with their families and they're working at least two part-time jobs, because a lot of our workforce is part-time and they must supplement that income. However, what they've told me is that they are calling the "bad boss hotline" that has been set up by the Ontario Federation of Labour and are encouraging others and their family members to do the same.

The next portion of my brief will note our views on some of the key amendments. To be blunt, we are in total agreement with the Ontario Federation of Labour's position on Bill 49. Members of my local have fully participated in the calls for action by the Ontario Federation of Labour and will continue to do so. The attacks by the Ontario government on people, while at the same time promising sweet tax breaks, have allowed us to mobilize our membership more than ever before.

I'd like to talk about the flexible standards in section 3, subsection 4(2) of the act.

Prior to Bill 49, there were basic rights guaranteed in Ontario similar to the rights set under the Canadian Labour Code. Contractual language could not erode the minimum standards as set out by the law.

Prior to these housekeeping proposals, any negotiations that took place had a level playing field, which has produced a province with a higher standard of living than in others. Allowing collective language to supersede the basic standards in areas like hours of work, severance pay, overtime and vacation pay when a contract confers greater rights when those matters are assessed together disturbs any worker's level playing field and upsets the balance between employers and unions, giving more power to the employers in this province.

Combine the push for tradeoffs with the legalized use of scabs that was passed by this government, who are the underemployed, and we will end up at the end of this government's political mandate eroding the current minimum protection. Employers in the past have successfully used threats such as plant closures to achieve

rollbacks. If there were no minimum rights, workers would be forced to either accept longer hours of work or less time off to keep a job. With unemployment high, more part-time than full-time jobs, cuts in unemployment benefits and welfare, combined with stricter rules, places substantial pressure on a worker to keep the job as it is rather than take a chance fighting the injustice. The government is offering no protection for workers.

Prior to the NDP government's changes to the labour standards, cleaners were not covered by successor rights. This allowed one company at that time to drag out negotiations until the eve of the expiration of a contract with Canada Post. What is the purpose of signing a collective agreement with a union if it becomes meaningless within hours of the ink drying? Where is the protection to the employees? This was our past experience with at least one bad employer.

1350

Prior to signing this collective agreement, the cleaning contractor would demand that the employees provide the names and social insurance numbers of dependants and/or spouses so that the moneys earned for overtime work performed could be paid at straight time rates. This is how this contractor avoided the law and the standards at that time. Watering down minimum standards will allow employers to legally do what they attempted to illegally do in the past.

The Canadian Union of Postal Workers sees flexible standards increasing labour disputes. Our cleaners, who are the lowest-paid workers at the post office, may never see their standard of living improve, and due to the elimination of successor rights, they could even see their jobs end or disappear.

Presently, unionized workers have access to the investigative and enforcement powers of the Ministry of Labour. The process has proven to be inexpensive and relatively expeditious for unionized workers, their unions and employers. By eliminating this avenue for unionized workers, it will place a burden on the grievance procedure. Under Bill 49, the Ontario government would successfully transfer costs to unions and their employer for enforcement.

In addition, we can see a backlog of cases developing that will prolong the length of time before one of our cleaners could achieve a settlement. The Canadian Union of Postal Workers knows what grievance logjams are from our bitter experience. At one time we had 180,000 grievances backlogged awaiting arbitration. People waited seven to 10 years for their grievances to be heard. Employers said to them, "If you don't like it, grieve it," because they knew it would take a long time before it would ever be answered. But we have also been successful in arbitration to the tune of millions and millions of dollars. Our Scarborough local has successfully won between \$10 million and \$15 million in moneys for our temporary casual workers.

The cost, though, for our union is very high. Approximately \$3 million annually is budgeted for arbitration costs. Our union is prepared for this potential finance; however, smaller unions or bargaining groups will not be. We see these amendments as aimed at starving small unions into submission while encouraging members of

others to take their union to the Ontario Labour Relations Board with complaints of fair representation.

Any employer who believes they will escape their share is banking on fools' gold. Unions will be forced to bargain for more to offset the members' legal costs. Strikes will be lengthy and vicious.

Under the enforcement for the unorganized, sections 64 and 65 of the act: If these sections pass, we foresee the responsibility for enforcement of minimum standards for non-unionized workers from the Ministry of Labour to the courts by way of the "other means" provision.

Also, the amount that is recoverable is capped at \$10,000, whereas currently there is no arbitrary limit.

Plus, if an employee chooses one avenue, such as to claim for severance payments to the Ministry of Labour, then Bill 49 restricts that employee from bringing a civil action for payment in lieu of wrongful dismissal for additional compensation. What these proposals will mean is that a worker who wants to file a complaint will have two weeks to decide to choose between taking the chance in the civil courts or to proceed under the regulations of the act.

The government, if these changes pass, will have shifted responsibility to enforce laws from itself to the workers, who will have to decide between door number one — the court — or door number two — the act. If the worker chooses door number one, will they be entitled to legal aid to assist them in any legal costs, when the government is currently gutting the legal aid system? With cuts to legal aid, we doubt many workers will be able to utilize their services.

In addition, section 64.4 contains restrictive language such that once a civil action is started, employers are given the bonus of not paying wages out. From our experience with employers such as Canada Post, we can see them banking the money, collecting the interest or counting it as a possible future liability. How does the worker gain from this? Bill 49 punishes the employees, not the employer, for the employer's abuse.

On the ceiling on claims: The arbitrary maximum claim of \$10,000 seems to apply to amounts owing of back wages and other moneys such as vacation, severance or termination pay, while the bill, though, notes that violations of pregnancy and parental leave provisions and unlawful reprisals are excluded. Those benefits are insignificant compared to the amounts that other workers will lose with a cap in place. Severance pay owed to a 20-year employee for a plant closure adds up to more than \$10,000. Arbitrary maximum or minimum claims will encourage employers to bank potential losses or just avoid any payments due under any contract.

Private collectors: Bill 49 recommends that private collectors be used in lieu of having the labour employment practices branch do its job of collecting the assessed amounts owed and enforcing the standards. Once again, the Ontario government is shifting the burden of governing to the private sector and attaching a collection fee on top of it. Victims get to pay for trying to obtain what is legally owed to them. This is morally reprehensible. How can you expect workers such as postal cleaners to afford trying to collect what is rightfully owed to them, or are you advocating that people work for free, as in the case

of the Screaming Tale where the employees were working for tips alone?

In conclusion, our brief may lack for examples of victims; however, the Canadian Union of Postal Workers are concerned. What you propose in Bill 49 will impede our negotiations with our cleaners. The Canadian Union of Postal Workers has a reputation for militancy. Why force us to deploy what has always been considered a last resort, a strike?

We are also concerned that the Ontario government will set a precedent, not only for other provinces but for the federal government as well. For example, we were informed that the Chrétien government had a draft of anti-scab legislation prepared, which was shelved in the dead letter office when the Ontario Conservatives repealed the NDP's anti-scab legislation. You don't think that the federal government looks to the province of Ontario for similar types of legislation?

Whether we are federal workers or not, the Canadian Union of Postal Workers members work in the province of Ontario. Members of our families and our friends work under provincial regulations and laws. If you deny my family the right to minimum standards and justice, you're interfering with my happiness and my living standards.

We see no benefits under the proposals of Bill 49. What we foresee if they pass is the organized workers and their unions being forced into longer, more violent and bitter strikes. The employers of the unionized sectors will see increased costs rather than savings. Canada Post Corp, for example, has spent millions of dollars in our past labour disputes, and we are still here.

The most vulnerable, the unorganized, the underemployed will never enjoy a better standard of living, which will in turn affect the buying power of the average Ontario citizen. If we do not purchase goods or services, then businesses will lose. Look at the past, the labour strike, the working conditions and the living standards. Our youth's morale is low now. With no government protection, they face a bleak working life. Thank you.

The Chair: Thank you, Ms Carroll. I didn't want to cut you off, but we've gone over the 15 minutes, so there won't be an opportunity for questions, but thank you for making your presentation today.

1400

UNITED AUTO WORKERS, LOCAL 251

The Chair: The next group up is the United Auto Workers, Local 251. Good afternoon. Again, we have 15 minutes for you to divide as you see fit between presentation, or question and answer period.

Mr Jim Lee: As president of UAW Local 251, I appreciate the opportunity of being able to speak with the standing committee on Bill 49. The membership I represent is over 4,000 members, ranging from workplaces where there are as many as 500 workers to places of 50 workers and those of 10. Our local extends from the Windsor area to the Toronto area, with the majority in Kent county.

With the way the draft is set, there are definite areas of disagreement, but there is one clear positive improvement. A parental or pregnancy leave will now be deemed to be included in the calculation of length of employ-

ment, length of service or seniority for determining entitlement under a contract of employment, which is defined to include a collective agreement. This provision, if passed, will essentially bring a legislative end to the practice of some employers prorating employment benefits which depend on a calculation of service, for example, length of vacation.

A disagreed area is recovery reduction from \$5,000 to \$2,000, by the wage protection program, of an employee. Workers hopefully have and will make increases in wages and benefits, not decreases. Changes in law should be made for the long-term effects and not just short-term.

Unionized employees will not be allowed to file complaints with the Ministry of Labour, though they must file a grievance for wages, vacation pay, termination pay and severance pay. The reality is that a six-month time period, reduced from the previous two years, for filing claims does not make common sense. This includes filing the grievance. Then there are grievance meetings, with responses to be done, if not resolved, to file either with the Ontario Labour Relations Board for an arbitrator or an arbitrator directly, depending on the agreement. Then there is the scheduling of arbitration hearings and also the response time on the award.

It does not make common sense to tie up the union's, the employer's or the arbitrator's time in arbitration, not to mention the cost. It makes sense to have the employment standards officer police these standards for all, not just the people without collective agreements. Then it gives the employer and the union the necessary time to continue and make the workplace viable, growing with job creation and profit-making for both parties.

With the announcement of the Honourable Mrs Witmer on Monday, August 19, 1996, of the workplace parties on flexibility to the standards, it really scares me that there would not be a standard to go from and that the pressure to negotiate below the standard in some areas will then be great, especially with hours of work. Then there is the area, if you negotiate above and below the standards, whether or not it meets the requirement of the act.

It is my opinion that these changed areas are dangerous for the workers in this province and should not be allowed. We should work from a standard. Yes, we are entering into the 21st century, and there is a common goal for the parties: that you will be making the laws which will affect, not just a few, but every worker and business in this province.

This concludes my views on Bill 49. If there are any questions, I would be glad to answer them.

The Chair: That leaves us two and a half minutes per caucus for questions. We'll commence with the government side.

Mr Baird: Pleased to have you here, particularly as one of the only UAW locals in Ontario.

Could you tell me what your experience would be with respect to violations under the Employment Standards Act now? How many would your union deal with in a year, let's say, and what has been your experience with the time frames and what not involved in terms of the administration of the current act?

Mr Lee: As for the numbers, I couldn't really tell you, because I don't have those stats with me, but we have

had some violations. Normally, when they do violate, if there is a good reasoning, then we can work things out. With six months, it doesn't give us time. Normally, when you have, say, hours-of-work problems, that can hopefully be worked out within. But if you're talking about pay, severance pay or that, normally what happens is that the business is in trouble; it gives us some time to work with that business. We don't have to clobber down on business, but if it is going broke, then fine, we make the necessary arrangements. But if there is some time in there, you give the opportunity to a business. You don't send a business down the tubes. That's what we're looking at.

Mr Baird: That's one of the premises of the bill, to provide more responsibility to the workplace parties. I mean, you folks are the ones there every day —

Mr Lee: But you can't do it within six months. If you've got problems in a workplace — and we have that right now, where you might have some problems. With the business you're doing, you're doing business on a global scale. You can't remedy things overnight. Things have to be worked out. There may be some other changes that may have to happen — new techniques that must be brought in, in order to make our people viable in a workplace. It takes time. You can't do it with a very short time.

Mr Baird: If you had more time, though, do you think you could do a better job yourself? If it was more than six months, for example, do you think you, as the bargaining agent representing the employees, could have a better way of dealing with the issue informally, and then formally with the employers that your local works with?

Mr Lee: Normally, yes, but I'll tell you, the six months is a killer.

Mr Baird: That six months is just to file a claim; it's not necessarily to resolve it within six months.

Mr Lee: Ah, but you have to have things in. If you don't have the things in process, then it's out.

Mr Baird: Thanks very much. I really appreciate it.

Mr Christopherson: Thank you very much, Jim, for your presentation. Although the government has temporarily deferred the issue of the flexible standards and contracting out minimum rights, I think it's important that we comment on them as we go through these hearings, because they haven't said they're dead; they've just said they've delayed them for a bit. You mention in your brief, "It really scares me that there would not be a standard to go from, and that the pressure to negotiate below the standard in some areas will then become great, especially with the hours of work."

We've had other presentations where they've talked about the fact that with scabs now being legal again, with the kind of concessionary bargaining that's taking place, we're not seeing the traditional kind of takeaways on the table. With this kind of law, we could see major, major rights negotiated away out of desperation, particularly smaller unions, isolated local unions, maybe even weaker unions that just don't have the strength to withstand a long strike with scabs. Is that consistent with your thinking in terms of what could happen in the Windsor area and the kind of things you see here?

Mr Lee: Yes. The thing is, if you put a lot of these things on the table — you're naturally going to go for wages and things like that. What we're looking for is security for both parties. If the company's not making money, the employees aren't going to make any money. That's being honest about it. If there are some avenues to what can be worked on if there are no standards set, then you're going to look below. It's going to be detrimental to the workers. That's where you're coming into injuries and everything else. Even the home life of our workers, when they're going to have to spend six and seven days a week at a workplace and not be able to see their families — there's going to be a split-up of whole communities. It's agreement with what you're saying.

Mr Christopherson: You mention in here that you're especially concerned about hours of work, and we're hearing that more and more, and the amount of pressure. Are you seeing that kind of pressure from corporations? Again, without the minimum standard in there, is there a real chance that we're going to see the quality of life for workers truly fall because of the kind of hours they could be forced to work if there's not a minimum standard in law?

Mr Lee: That is true. I'm seeing it in some of the companies, where they would prefer to have the workers there work more hours and tire the people out. I haven't got stats on it and I haven't got any proof, but I know that a lot of people have worked long hours and continue to work long hours. They're getting killed on the highways going home. That's what I'm scared of. Of course, from there it's the split-up of the families and everything else that goes with it.

1410

Mr Hoy: You mentioned flexible standards and so on. In the second phase of the minister's discussions on labour laws —

Mr Lee: Is that from the 19th?

Mr Hoy: That's right. I just want to say that I think this "confers greater rights when those matters are assessed together," in my opinion is going to be very difficult to define or to put parameters around. What do you think about those words "confers greater rights," the definition? How's that going to be put in place, do you think?

Mr Lee: I think I've alluded to it, and that is, how are you going to define what meets the act, if that's where we're coming from? You might go above and below, and then above and below again or maybe equal to, but what really says you're conforming to what the people's needs are and where the responsibility is? I have to look at it from my perspective, the responsibility of a union leader to be responsible to the members and whether it conforms with everything that's there to protect the worker. Hopefully, that answers your question.

The Chair: Thank you for taking the time to make a presentation before us here today.

LEGAL ASSISTANCE OF WINDSOR

The Chair: That leads us to Legal Assistance of Windsor. Good afternoon. We have 15 minutes, and it's up to you how you care to use that, in presentation or question and answer.

Ms Rose Voyvodic: Thanks. Maybe I'll just present. The brief has been circulated, so people can refer to it if I don't get to cover the whole thing.

I'm here on behalf of Legal Assistance of Windsor, which is a community legal clinic sponsored by the University of Windsor faculty of law and funded through the Ontario legal aid plan. Our clinic offers services to low-income communities of Windsor and Essex county in most civil and administrative areas not covered by the certificate program of legal aid. We endorse the brief which was presented to this committee on August 19, 1996, in Toronto by the Employment Standards Working Group and share the concerns raised in that document.

We too receive numerous inquiries from non-unionized employees with respect to problems encountered with working conditions or, mostly, termination of employment. We frequently refer callers to local employment standards officers, and until last September we were also able to refer clients with potential wrongful dismissal claims to the local legal aid office to apply for a legal aid certificate. Unfortunately, however, due to cutbacks to legal aid, these certificates are no longer available for wrongful dismissal claims.

Bill 49, in our estimation, appears to create even more new problems for our clients in obtaining access to justice. We are concerned that the limitations and restrictions placed upon potential claims by this bill will cause many of our clients to suffer losses which, though illegal, cannot be repaired, either because the technical changes to the law place unworkable limits on the claim or because the clients do not possess sufficient resources to hire private lawyers.

The reason we have requested the opportunity to present this brief to you today is to alert the committee further to the dangers inherent in Bill 49.

As you will know, the current Employment Standards Act provides basic rights for all people working in Ontario today and is of particular importance to the vast majority who are not members of trade unions, mostly simply because they generally do not possess grievance and arbitration rights and need the power, such as it is, of employment standards officers to assist them to redress workplace problems.

The employment standards set by this legislation include minimum wages, maximum hours of work and overtime pay, public holidays, paid vacations, unpaid pregnancy and parental leave, equal pay for equal work, termination notice, severance pay and adjustment measures to assist people who are laid off. The changes introduced by Bill 49 affect the means by which these minimum standards may be enforced. In our submission, the changes proposed by this bill will in essence render the employment standards legislation meaningless for a great many Ontario workers.

A clear goal of the bill before you is streamlining. This has been in the statements made by the minister. Consequent to that goal would be cutting costs to the administration and enforcement of employment standards. A more significant but hidden purpose of the act, in our submission, is to remove mechanisms for Ontario employees to enforce their rights and consequently to severely restrict those which remain.

The effect of this legislation is the removal of rights from Ontario employees, particularly those in the low-paid sectors or occupations which are non-unionized. Those include food processing, foodservices, retail, cleaning and domestic workers. These people lack the ability to bargain collectively and thereby achieve greater workplace protection.

The Windsor-Essex County Development Commission notes in its profile that 28% of the labour force in this region is organized. Notably, only 8% of companies with 50 or fewer employees are unionized. Two thirds of Windsor-Essex county has no union involvement. This would seem to coincide with the figures compiled by Statistics Canada on a federal level, as well as other regions in the province.

The placing of new restrictions and limitations on the types of complaints which can be enforced by ministry staff will have a disproportionate impact on the non-unionized workforce, particularly among poorly paid, unskilled labourers who must rely on the ministry staff to enforce their rights under the act. The policy basis for this shift appears to be linked to a desire to achieve greater competitiveness on a global level through the removal of the barriers created by employment standards. In our submission, even if a claim can be made that such a shift would increase competitiveness in some circumstances, it is difficult to understand how the wages and conditions paid to workers in small businesses, and particularly in the personal service sector such as dry cleaners, restaurants, cleaning services and coffee shops, for examples, have any impact on global competition.

For this reason, there must be some consideration of the disproportionate impact the removal of protections across the board will have on people working in jobs in this sector as well as all jobs which are casual, temporary, part-time, poorly paid, low-skilled and insecure. The Economic Council of Canada, in a study entitled *Good Jobs, Bad Jobs*, from 1990, characterized 33.8% of all jobs in Canada in the late 1980s as "non-standard" and 76.4% of jobs in the service sector. Women and youth are overrepresented in this category of jobs, the majority of which are poorly paid and insecure.

Restructuring of the labour market and the economy away from a sound base of employment standards leaves the door open to disputed conditions and terms of employment, as well as the possibility that employers may use the threat of unemployment to lower wages and worsen working conditions to a level unacceptable in a democratic society. It is regressive and misses the opportunity to provide a public infrastructure needed for a productive and growing economy.

Bill 49 shortens the period in which a worker can complain about a violation of the Employment Standards Act from the two years which is now found in the legislation to six months. Currently, approximately 10% to 15% of claims filed according to ministry staff relate to incidents occurring more than six months prior to filing a complaint. This is a significant number, in our submission, and would appear to accord with our experience that workers are often reluctant to seek intervention in their workplace until they have no further alternative, for fear of reprisals.

Under Bill 49, these individuals will be forced to take their employers to court in order to obtain a remedy. This, in our submission, is an illusory right. The reality is that Bill 49 provides no initiatives to aid in the funding of civil actions. The legal aid plan, as I mentioned earlier, recently eliminated wrongful dismissal actions from coverage for those unable to afford private legal counsel. Assistance through legal clinics is only sporadically available throughout the province.

Workers who are already financially vulnerable and become subject to violations of the act will be forced to either find the resources to fund a civil action privately or in effect waive their rights to obtain justice.

From a policy perspective as well, this seems wrong. We question why the court system, which is already overburdened, should be used at all when an administrative mechanism already exists.

1420

Bill 49 also limits the avenues available to address violations of the Employment Standards Act by forcing workers to choose between pursuing a civil remedy and filing a complaint under the act. This is said to eliminate the so-called double jeopardy for employers. However, there is no double jeopardy in Ontario law. This has been resolved already by the courts, that an employer cannot be forced to pay twice for a violation of the Employment Standards Act.

Now, under Bill 49, a remedy under the act would no longer be available to persons who wished to preserve their rights by initiating both avenues simultaneously, and there can be many practical reasons for a person choosing to do that. If a civil action is initiated under Bill 49, there would be a two-week grace period in which it may be withdrawn and an application under the act commenced. This period, in our submission, is far too short to be of any use, particularly if the employee is attempting to obtain instructions and consult with legal counsel, and particularly within the six-month window.

With respect to minimum and maximum amounts, the regulations to the act which will set a minimum amount owing before a claim can be initiated is also of concern to us. We feel that this will undoubtedly place a significant impediment on low-wage earners who may be owed an amount that is lower than the minimum prescribed but nevertheless a significant percentage of that individual's income. We have heard the figure of \$100 being rumoured to be the amount to be set by regulations, and in our experience that is fairly common. People will be shortchanged through wages. We've had situations where restaurant employees have been forced by the employer to cash their cheque in the restaurant and then pay for spills or some type of breakage. In several cases, the amounts claimed over a several-week period have been within the \$100 range. It's illegal for the employer to do this without properly abiding by the minimum wage standards and so on, but for an employee to pursue that — now they can under the Employment Standards Act, but under Bill 49, it would be impossible if the minimum standard is set at that level.

We believe that that minimum limit on recovery is not reflective of the wide range of incomes that exist. A worker employed at minimum wage should not be subject

to the same minimum qualifying amount as a worker making four or five times as much income.

The diversity in incomes is one issue, but we feel that ideally there should be no minimum at all. A worker should be able to take steps to collect any amount owing to them no matter how small or large that amount may be. If the concern is frivolous or malicious claims, it would seem that those could be dealt with by way of cost penalties which would void the claim. To bar access to a just resolution based on the amount your rights have been infringed, in our submission, conflicts fundamentally with the basic tenets of our justice system. To set this limit for pure fiscal or administrative reasons is inexcusable. It's also confusing to us, because we've been advised that approximately 4% to 5% of all claims now to the ministry are for amounts under \$100. For example, in 1995, of the approximately 13,000, 550 were for amounts under \$100. In our submission, that statistic speaks to two issues: (1) that is a significant number of individuals in the province who were aggrieved; and on the other hand, it is not such a significant number that a large percentage of the ministry time was spent on these claims. We wonder, then, why these claims should be eliminated.

The issue of the minimum limit is further complicated by the lowering of the limitation period to the six-month window. If the board won't go back past the six-month period, then the minimum would have to be met within that time. Even if there are multiple infractions, the period is only one year. If there's a very low annual income that the individual is earning, a high minimum will prohibit an application, and it is persons of low income who are most harmed by violations of the act involving even the smallest amounts, even when those amounts involved may appear trivial to persons of greater means.

The changes to the act, therefore, will have a negative impact on the poorest workers while having a lesser impact on those with higher incomes. Those workers most in need of the act's protection will be most adversely affected by the changes.

Conversely, the maximum limit of \$10,000 which will be set under Bill 49 on the amount of claims is equally problematic. It too limits the extent of the remedy available to an individual, not having regard to the extent of the harm they may have suffered. If a breach of the act causes damages in excess of \$10,000, that worker should be entitled to whatever is owing.

We're not clear as to why the government is setting this arbitrary limit, particularly when the statistics seem to show that very few claims are for amounts greater than \$10,000. It may be that the government feels that small claims do not warrant attention and that very large claims should be handled by the courts, but the fact remains that the vast majority of workers need to be able to rely on the employment standards legislation to protect their rights. As individuals, the cost of protecting these rights themselves is either beyond their ability or prohibitively expensive.

Despite the shortening of the limitation period and the period which can be looked at for the violation, the ministry continues to have a two-year period to investigate alleged violations and two years for the employer to

pay. To us, the goal of administrative streamlining as far as shortening limitation periods appears to apply unfairly to employees.

Debt collectors: This is another serious concern to us under Bill 49, whereby collection of amounts owed can be assigned to private debt collection agencies. These agencies will have broad-ranging powers under the legislation, including the ability to demand payment, to issue a certificate enforceable as a judgement, to enter into a reciprocal enforcement of orders, to collect and distribute amounts owing, and to negotiate settlements for less than the full amount owing to the employee.

That particular feature of it causes us concern. If, as the bill stipulates, a negotiated settlement may be for no less than 75% of the amount owed, we are concerned that rather than providing protection for workers, this protection may in fact suggest a compromise that collectors and violating employers should reach. There is little doubt that the least powerful workers who are most in need of the protection and remedies contained in the act will be subject to the greatest pressure to accept a settlement of 75%, if not through coercion then out of necessity to avoid further delay.

Adding to the potential for delay, the bill has extended the length of the appeal period from 15 days to 45 days. This, in effect, delays by an additional month the collection of money owed where no settlement is reached.

The other issue with respect to the debt collectors is the ability to reach a settlement with the employer on behalf of the worker. While the employee's approval is required, given the powerlessness and desperation of an employee waiting for payment, combined with the possible lack of knowledge of their rights, this new legislation, in our submission, opens the door for workers to be coerced into settlements by private collection agencies eager to settle and move on to the next file.

In conclusion, we have several comments to make from a historical perspective and also from a policy perspective.

Before employment standards legislation was enacted, employers in this province and elsewhere were allowed to dictate practically any terms and conditions of work and could rely upon their superior bargaining power to get people to work for them regardless of the circumstances offered. Contrary to the claims asserted by opponents of regulated employment standards, high rates of unregulated freedom of contract on the part of employers has not historically meant lower unemployment rates. One only has to look back to the Depression years of the 1930s to understand that the absence of a minimum standard for wages, hours of work or vacations did not ensure a reasonable level of employment.

While Bill 49 does not remove the minimum standards explicitly, in our submission it does so by allowing legitimate claims to go unenforced through its restrictions and limitations.

Bill 49 represents a significant undermining of workers' rights in Ontario. Not only will the proposed amendments make the enforcement of workers' rights more difficult, the amendments to the act would specifically allow employers to violate workers' rights without fear of penalty. The bill, in our submission, represents a

bonanza for employers and a regression of decades for workers.

The changes suggested by Bill 49 will have the greatest effect on those workers who can least withstand it, namely, unskilled, low-earning workers in a non-union environment.

Any time an employer withholds income owed to an employee, that employee's rights have been violated. The amount involved should not be determinative of the violation but a secondary question of compensation. To deny a right to claim based on the amount of the claim is to deny justice to all workers and is a giant step backwards in labour legislation and worker protection. The rights of individual workers should not be sacrificed in the name of business plans and economic improvement. Business is an essential part of our society, but it is not the only part. We cannot strengthen our society by undermining its foundations in order to strengthen only one aspect of it.

1430

We would argue that deregulation does not bring prosperity to any but a very small, powerful segment of society. If the employment standards set in Ontario law cannot be enforced by those for whom they exist, and if the standards are eroded by the creation of restrictions on one's ability to seek remedies when the standards set are violated, there is no progress, there is only injustice.

The Chair: We've gone well over the 15 minutes, so I thank you for your presentation.

CANADIAN AUTO WORKERS LOCAL 127

The Chair: Our next presentation is the Canadian Auto Workers, Local 127. Again, we have 15 minutes for you to use, either in presentation or questions and answers.

Mr Derry McKeever: As you can see, I've prefaced my submission with an opinion from the Chatham Daily News, August 21, 1996. It wouldn't be true if it wasn't printed in the Chatham Daily News, and I'm sure you can appreciate it.

Interjection: It came from the Toronto Star.

Mr McKeever: I guess they must be influenced by the community.

The National Automobile, Aerospace, Transportation and General Workers Union of Canada, CAW Local 127, political education committee, is happy to have the chance to appear before this very important committee of the Ontario Legislative Assembly. This government has raised the concerns of CAW 127 members — working or laid off — and also the concerns of the general community about the Employment Standards Improvement Act, 1996, or as it's more commonly known, Bill 49.

CAW 127 is one of the largest local unions in Kent county, and we are located in Chatham at 280 Merritt Avenue. Local 127 currently serves about 4,000 members in 17 different workplaces. These workplaces are in different communities in Kent county, including Chatham, Blenheim, Tilbury and Grande Pointe. Our members live throughout Essex, Kent, Lambton, Middlesex and Elgin counties.

Local 127's members are mainly involved in the manufacturing sector, but not exclusively an auto parts producing or assembly oriented local union. Members of Local 127 are employed by diverse employers, including: Navistar, a producer of heavy trucks; Eaton Suspension, an auto industry spring maker; Siemens, an auto industry electronics supplier; Dover Corp, a gas station parts maker; Sonoco, a food and beverage industry packaging supplier; Daymond, an aluminum extrusion and anodizing company; Trimplas 2000, a plastics coating company, and there are many other local employers that we are organized with.

Local 127 has a membership which reflects the demographics of our community, representing many cultures. We are united with four other CAW local unions in Kent county, addressing concerns about the erosion of our workers' rights and employers' responsibility. We, as local unions, are bonded by the common thread of a quest for social justice for our members and for those in the community not working or employed by businesses without unions.

My name is Derry McKeever. I have been a member of CAW Local 127 for over 23 years. I am elected to the 26-member executive board of Local 127. I serve on the board in the position of trustee. I am a member of the local union's political education committee and have been for a long time. I've been laid off and out of the workforce for about a year.

CAW Local 127 appears before this committee today to strongly oppose the gutting of employment standards and to stand in opposition to the reduction of the most basic standards or minimum standards in the workplace that everyone — employer and worker — has come to know and rely on in their quest for fairness for working people.

We are aware that the Minister of Labour, the Honourable Elizabeth Witmer, has chosen to temporarily withdraw discussion in some areas, but we believe we must speak about the basic standards now and when more intensive discussions take place later this year.

CAW 127 wants to know, why are changes in the basic or the lowest common denominator necessary? As you see, on page 4, I have included comments by the Honourable Elizabeth Witmer about the changes.

Moving on to page 5, when the business community went to the federal Conservative government stating that all they needed for economic survival was free trade — I think everybody here remembers that one — it was complied with by your buddies in Ottawa. Then they asked for NAFTA. Transportation deregulation was next, communications deregulation, banking deregulation, all requested by business, all complied with. All of these changes were granted and have major effects on employment. All of the changes resulted in job losses in Chatham and Kent county. The employer I work for went from 1,000-plus people employed down to 200 right now and even less than that, and these are changes due to the auto pact and free trade.

1440

It is no secret, and continues to be shown, that the current Ontario government is strongly influenced by these same business groups and employer organizations.

When they asked for the repeal of anti-scab laws, this government complied wholeheartedly.

The business concept of deficit reduction comes at the expense of working people. Layoffs and cutbacks become the norm for working people. I know; I am a statistic. I'm a person also. I felt the effects of government action. I have friends and family working. They need the basic provisions of the Employment Standards Act maintained and enforced this very minute — now. They don't need less employer responsibility. They want protection of their rights. Is asking for reasonable employment standards which protect the rights of workers too much to ask for in this society? CAW 127 political education committee believes not; it's not too much to ask.

Employment levels in Kent county and within Local 127-represented workplaces are at a very low level. CAW 127 once represented 7,000 workers in Kent and area. Many factors are responsible for this, not the least of which is government deregulation, which Bill 49 is part of. The actions of this government and committee will be around for many years — a long time after you guys are gone. The legacy of the proposed changes to the Employment Standards Act will be the weakening of the job market. This weakness will translate into worker fear and discontent. Unhappy workers are not productive and persons living under fear of unfair employer actions don't support local businesses because they're apprehensive when spending moneys earned, if they get paid.

Bill 49 will pass the cost of enforcing employment standards to unions by requiring unions to assume responsibility for employment standards complaints by our members through the grievance system. Let me tell you, the grievance system is under heavy pressure right now with employers taxing our union resources by their reluctance to settle basic contract issues.

Bill 49 is grossly unfair in its direction that will force non-unionized employees to cover costs of enforcement at a time when wages are under heavy cutbacks and enforcement costs are up. We don't think it's fair to ask employees to pay collection costs on money and benefits already owed. This will reduce the amount of money eventually collected, placing an employee in double jeopardy and leaving the bad boss, the unfair employer, free of penalty when caught.

Bill 49's lumping together of minimum standards around the issues of wages, severance pay, hours of work, overtime, public holidays, vacation pay, equality of pay and parental leave will put unions in a difficult position, that being if improvements in wages are made and losses in other areas are incurred, will this be viewed as an apparent improvement in all areas that have been combined after unions are forced to negotiate these standards? We don't know, but we suspect it will.

CAW Local 127 political education committee believes that the proposal to shorten an employee's time to claim money owing from the current two years down to six months will hurt ordinary working families who do not have the financial or information resources that employers can freely access. When you live paycheque to paycheque, it's hard to allocate money for lawyers if it takes food out of your kids' stomachs.

Changes to the Employment Standards Act that say an employee may not file a complaint if represented by a

union are unfair. Many times areas not covered by collective agreements require individuals to initiate a complaint. That right is gone.

At a time when company and corporate profits have gone through the glass roof, it is hard for members of CAW 127 to believe that the basic rights covered under the Employment Standards Act are an unfair burden to employers. Even when the Conservative government was in power for 40 years, basic rights for people had a place in the government's approach to social and economic justice. Proposed changes to Bill 49 and the Employment Standards Act destroy the workers' rights, decrease employer responsibility and leaves the concept of economic justice lost, along with this government's credibility.

Erosion of earnings by employers equals weakness in spending. If we don't have the bucks, we can't put them in your cash register. You can't have it both ways. Why further block economic gain in Ontario by attacking workers and their families?

The employer I am working for, when I work, has blocked any attempt at wage gains by Local 127. After this collective agreement expires, we will have been working for 12 years and we will have had no income improvement. We have made gains in other areas, but our real income has declined. How will workers not unionized make gains? If they wait for this government, they may never get a raise. Under Bill 49 proposals they will gain very few benefits.

The number of days production lost due to strikes has increased this year. Labour's in a fightin' mood, folks. I'm here to let you know that our friends in the Aluminum, Brick Glass and Ceramic Workers' International Union in Wallaceburg went on strike against their employer around the issue of two-tier wages. That's the concept of pay for new workers who do the same job being much lower and never increasing. They were successful in thwarting the employer's demands. They stood up for what's right, and we will too.

This government's job is to create a climate where good jobs will be created. You can't do that when workers are mad. Angry workers go to the street and tell the world how they feel. Media coverage is widespread when strikes, protest marches, occupations and city shutdowns happen. While I've been unemployed, I've talked to my friends, relatives and neighbours about the effects of Bill 49. People are angry and frustrated. They want you to know how they feel; they want you to listen to their stories.

I've enclosed also on page 9 a summary of a recent meeting that was held in Fort Erie, Ontario, between some folks and the president of the Ontario Federation of Labour, and I invite you to read that at your leisure.

In summary, we need better enforcement of the Employment Standards Act, more inspectors, quicker actions, tougher penalties for bad bosses and an even hand in employment regulations.

Fifteen minutes to speak about the problems Bill 49 will create is not sufficient to tell you how Local 127 political education committee feels. We've travelled 100 kilometres today to discuss these issues. We've shown our commitment to workers. We need your assurance that fairness will prevail. Thank you.

The Vice-Chair (Mrs Barbara Fisher): Thank you very much. We are left with about a minute and a half per caucus, starting with Mr Christopherson.

Mr Christopherson: Derry, thanks very much for a very impassioned presentation that I think reflects very much what's happening across the province as people begin to add up all the measures that this government has taken against workers, against unions, against the most vulnerable.

I want to focus a bit on where you talk about the future and where we're going. This government has said from the beginning — they're great at talking the words, but what they say is one thing and what they do is always quite another. They talk about wanting to open up Ontario for business, they want to protect workers' health and safety and they care about vulnerable workers.

The reality is, they shut down the Occupational Health and Safety Agency. They're attacking rights of disabled workers under WCB. The health clinics are under attack right now. Scabs are legal again in the province of Ontario and now they're talking about the ability for employers to concession-bargain even the most minimum rights.

The NDP said from the beginning of this government's mandate that they are looking for trouble, that they are going to have more labour unrest than they've ever seen in the history of Ontario and that can't be good for business. Will you give us a sense of how you see this unfolding in your area? Is there anything that can prevent this or, if they continue down this agenda they've started, is this inevitable?

Mr McKeever: Frankly, Mr Christopherson, I'm very disappointed today and I'll tell you why I'm disappointed. The only sitting Tory member in the south west is Jack Carroll from the Chatham-Kent riding. Jack Carroll's not here today. Jack Carroll doesn't care.

Mr Baird: On a point of order: I feel that it's important to indicate — this is obviously something with respect to the standing orders — that Mr Carroll is a member of this committee. Regrettably, he sits on two committees and he is the Chairman of the standing committee on general government, which is on hearings across the province at this moment. We eliminated the extra moneys for committee members. I think it's important to put that on the record because Mr Carroll, I know for a fact, would have been here if he was not scheduled to be on another committee. He is on a travelling committee and I think —

Mr Christopherson: Point of order, Chair: I would ask that you deduct the time that Mr Baird just spoke from the comments that Derry is entitled to make.

The Vice-Chair: I have no problem doing that.

Mr Christopherson: Thank you.

The Vice-Chair: I was looking at the time. There's 30 seconds left on the answer to this question.

Mr McKeever: I'm really disappointed that I would be interrupted like that because I have to make the point that every time we have tried to meet with Mr Carroll in his office, he has refused us. We had to have demonstrations in front of his office to get him to come out of the office and he wouldn't do it. The people in my community are angry, upset and they're going to go to the streets.

We'll be in Toronto on September 25 and 26 and I hope to see everybody here there.

Mr Christopherson: Thanks a lot, Derry.

Mr O'Toole: Thank you very much for a very energetic presentation. I want to just clarify the record. I'm the substitute for Jack Carroll who is Chair of another committee. I think it's important because I find Mr Carroll a very compassionate member and I'm sure he would — I'll pass on the comments that you specifically have tried to contact his office.

As part of the leadership group in the area, I gather you're telling me you're very interested in sitting down and participating in any changes to the employment standards legislation. Is that what you're saying?

Mr McKeever: Yes.

Mr O'Toole: You'd expect that Gord Wilson, Buzz Hargrove, Leah Casselman, Sid Ryan and all the boys and girls would be there anxious to participate in a positive, constructive way, right?

Mr McKeever: If the parameters are set and we know what you're attempting to do, yes; we'll sit down if it's fair and reasonable. But if it's unreasonable and unfair, which these proposals are, I think it's absolutely correct that Gord Wilson doesn't meet with you.

Mr O'Toole: I hope that doesn't include any demonstrations. I only make the point that I believe that demonstrations and any sense of violence or creating that kind of confrontational thing is not productive, as well. I think these public hearings are very important. We are listening and I'm certain that changes —

Mr McKeever: I said that they are important.

Mr O'Toole: I really do as well and I appreciate your coming.

Mr Christopherson: Why didn't you support it in the Legislature? How come I had to force you to come out into the public? Why didn't you want to come out here? You were forced to come out. You won't stop doing that, will you, John? You keep talking about wanting to hear from people. Your government didn't want to have public hearings. You want to fight with the public and you won't stop saying it.

Interjections.

The Vice-Chair: Thank you. Excuse me, Mr O'Toole, you're out of order. The time has expired. I would like to move on to the official opposition, please.

Interjections.

The Vice-Chair: Mr O'Toole, Mr Christopherson, excuse me; it is all out of order right now. One person is supposed to be speaking at a time. The time has expired. I would now ask for comments from the official opposition.

Mr Hoy: Good afternoon, Derry. In the beginning of your presentation you mentioned the various localities that you represent as a union, and I dare say that you probably represent people from my home town of Merlin, even though it may not have a facility. I didn't have a chance to mention it and I'm pleased to know this statistic because I think it reflects quite a bit about the riding, of which I share a part of Kent and part of Essex: two thirds of industry in Windsor-Essex county have no union involvement. I was happy to be informed of that from the previous presenter.

The riding, 30% of the people living within it, has an income level of lower than \$30,000 a year, so much of what you're concerned about is for those at the lower income scale rather than higher.

You were talking about tougher penalties for bad bosses. Would you elaborate on just what levels you think would be appropriate?

Mr McKeever: Madam Chair, I wonder if I might be able to speak without being interrupted this time. How much time do I have left?

The Vice-Chair: As a matter of fact, time expires in five seconds, but if you'd like to take a moment, I don't mind that. I ask everybody to be kind enough to have the answer heard. Thank you.

Mr McKeever: I find it really difficult to answer your questions, Mr Hoy, extremely difficult in view of the fact that you have been on record in Hansard on at least two occasions stating that you don't think unions should be extended to agricultural workers when you know full well that there was a coroner's inquest in Charing Cross, Ontario, which you represent, where a worker was torn apart by a machine that had five different power sources and you did nothing but stand up and say, "He shouldn't have a union." Mr Hoy, you're worse than those guys.

The Vice-Chair: Thank you very much. We appreciate your comments today.

1450

WINDSOR AND DISTRICT LABOUR COUNCIL

The Vice-Chair: Could I please have the representative from the Windsor and District Labour Council come forward. Good afternoon, sir. For the sake of those present and Hansard, I ask that you identify yourself and continue on.

Mr Nick LaPosta: Thank you. My name is Nick LaPosta. I am here representing the Windsor and District Labour Council. I hold the position of financial secretary to that council and I represent more than 40,000 organized workers in the tricity area here in Windsor and Essex county.

Before I get into the presentation, which is very brief, I'd like the standing committee to understand that the Windsor and District Labour Council, whom I represent, comes before you with mixed emotions. I say that with tongue in cheek, because we do not believe that the good work this committee is about to embark on is actually going to amount to much once you've heard the last presentation and come to the last meeting in the last city.

We have a Minister of Labour who introduced proposals for change back in May. We have that same minister claiming to put the brakes on those proposals but wants them passed this fall. We are currently in the latter part of August. Your trips, your meetings in the upcoming cities, the information you are going to gather and whatever conclusions you may come to we really feel are not going to make it into the final cuts to the proposals. We don't believe that the work this committee is going to be doing will end up in any type of substantive change to those proposals. We do believe that the main thrust of the proposals is to assist the current government to come up with a portion of that \$10 billion it needs to pay for its tax cut to the wealthy and the elite.

While you're bearing that in mind I'm hoping, on behalf of the Windsor and District Labour Council, that whatever you come up with does not add to the proposals being submitted that would actually take away from the Employment Standards Act. The one question I hope this committee will answer is, where is the crisis within the Employment Standards Act? We have not been made aware of one.

There are three areas I'd like to talk to you about. One is dealing with flexible standards, the maximum claims and the use of private collectors. I want the standing committee here to understand that we are unequivocally against these proposals. If there is anything that the Minister of Labour should be doing, it should be enhancing the current legislation. I will refer to a couple of examples that are currently going on right now where, had the legislation been enhanced — by "enhanced" I mean given teeth so that the officers of the ministry could enforce the legislation that is currently there — there would be no need for this at all, except another way to try and find \$10 billion.

Under "Flexible Standards" in the proposals, section 3 of the bill, subsection 4(2) of the act: This bill contains a fundamental change to Ontario labour law by permitting workplace parties to contract out important minimum standards. Prior to Bill 49, it was illegal for a collective agreement to have any provisions below the minimum standards set out in the Employment Standards Act. Bill 49 allows a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay if the contract confers greater rights when those matters are assessed together.

These measures erase the historic concept of an overall minimum standard of workplace rights for unionized workers. Employers are now free, for example, to disregard this previous floor of rights and have the opportunity to attempt to trade off such provisions as overtime pay, public holidays, vacation pay and severance pay in exchange for increased hours of work.

At this point in time, as we sit here and I'm making this presentation, we have an employer in this city that is a spinoff from the casino that is working. It's Your Choice Shuttle. We have an organized workforce at Your Choice Shuttle. The full-time workers at Your Choice Shuttle have a contractual agreement that specifies, effective July 1 of this year, that all those employees who worked 1,200 or more hours in the previous year are entitled to two weeks' vacation pay or 4%, whichever is greater. The employer's response was not to pay it, forcing them to go through a grievance procedure, and as I'm here today there is a grievance meeting going on dealing with that. The company's response to the grievance was, "We are in accordance with the Employment Standards Act and in accordance with the negotiated contract, so grievance denied."

We're saying to the committee here today that a simple call to the Ministry of Labour showing an example of the contract, bringing it to them to examine it with the current legislation on the books, easily could have forced, if they had the power, this employer to say: "You're wrong. You have an agreement. This is what you owe."

Pay it." Instead we have a grievance procedure now which is going to retard payment regardless of whether we win or lose. That isn't the issue. It's black and white. There was no reason to go to a grievance procedure in the first place.

These are the types of changes that should be put on the books if the Ministry of Labour really wants to assist the working people in Ontario. This type of teeth, as I refer to it, in that legislation would give officers of the ministry the right to contact the employer, make like an arbitrator and say, "This is outside the law; you are contravening your contract; you must pay," and actually force the employer to pay. We're not asking for anything more than what they're entitled to.

This proposed amendment therefore will allow employers to put more issues on the bargaining table which were formerly part of the floor of legislated rights. It will make settlements more difficult, particularly for newly organized units and small service and retail workforces. It will also enable employers to roll back long-established, fundamental entitlements such as hours of work, the minimum two weeks of vacation, severance pay and statutory holidays by comparing these takeaways to other unrelated benefits which together can be argued to exceed the minimum standards. The potential of this amendment alone to erode people's standard of living should be enough to make the drafters of the amendments rethink, if not radically alter, Bill 49. It is certainly enough to make the Windsor and District Labour Council stand in opposition to the bill as a whole.

Under the proposed maximum claims, section 21 of the bill, subsection 65(1) of the act, the amendments introduce, as noted above, a new statutory maximum amount that an employee may recover by filing a complaint under the act. This maximum of \$10,000 would appear to apply to amounts owing of back wages and other moneys such as vacation, severance and termination pay. There are only a few exceptions, such as for orders awarding wages in respect of violations of the pregnancy and parental leave provisions and unlawful reprisals under the act.

The problem with implementing such a cap is that workers are often owed more than \$10,000 even in the most poorly paid sectors of the workforce such as foodservices, garment workers, domestics and others. Workers who have been deprived of wages for a lengthy period of time are the very employees who will not have the means to hire a lawyer and wait the several years it would take before their case is settled through the tort system. In effect, therefore, this provision will encourage the worst employer to violate the most basic standards while at the same time compounding the problems for those workers with meagre resources.

I want to bring to mind, right here again in our fair city, the Windsor plastics workers. Back on December 23, 1994, two days before Christmas the announcement of closure was made. At that particular closure the Windsor plastics workers had overtime pay owing to them. The basic week wages leading up to the closure was left owing to them. Improper notification, thus leading to termination pay, was owing. Severance pay for their years of service was owing. The answer, "Sorry, we're broke." That was it.

If the legislation that is currently on the books empowered the ministry to force these companies to meet those requirements prior to their claiming, "Sorry, we're broke," there could be an entirely different attitude by employers when they see that their business is a go or a bust; there would be an entirely different attitude around boards of directors who simply say, "Let's give it one last shot, and if we don't make this business turn around, we can always make money by claiming bankruptcy and hiding under the bankruptcy laws of this country."

These are the types of changes that I'm sure every labour leader in this province would be happy to sit down with the minister and talk about. These are the types of changes that aren't in the legislation now that the legislation needs if we want to talk changes. But we can't dismantle the legislation as it's there. By dismantling that, you take away every right; it's a bigger race to the bottom for everybody, not just organized workers but unorganized as well.

1500

By the way, those Windsor plastics workers are still in the tort system and we are still chasing down the four different factions of that corporation that owe not only the workers but the province moneys. They were secured moneys to make sure that they gave it that shot to put them back on the balance sheets, and the promise they made to hire and expand never did come to fruition. I just thought I'd mention that.

Bill 49 also gives the minister the right to set out a minimum amount for a claim through regulation. Workers who make a claim below the minimum, which is as yet unknown, will be denied the right to file a complaint or have an investigation. Depending upon the amount of this minimum, it could well have the effect of employers keeping their violations under the minimum in any six-month period and thereby avoiding any legal penalty.

The third point, the use of private collectors, deals with section 28 of the bill, the new section 73 of the act. The proposed amendments intend to privatize the collection function of the Ministry of Labour's employment practices branch. This is an important change, providing one of the first looks at the government's actual privatization of a task which has traditionally been public. Private operators will, should these proposals be implemented, have the power to collect amounts owing under the act.

This provision will likely lead to employees receiving considerably smaller settlements. As well, they open a door to unconscionable abuse. The Windsor and District Labour Council is gravely concerned that employees, particularly the most vulnerable, will be pressed to agree to settlements of less than the full amount owing as collectors argue, if only for reasons of expediency, that less is better than nothing. Having at the same time to pay a collector amounts to nothing less than legalized theft. At the same time, unscrupulous employers will de facto now have their assessments for violations lowered and thus be encouraged to continue their violations of standards.

In conclusion, as our comments on the key amendments of Bill 49 indicate, no one concerned with maintaining basic societal standards in terms of hours of work, overtime pay, vacation pay, severance and public holidays

can possibly favour these amendments. Bill 49 would eliminate the floor for minimum standards. As for the unorganized, particularly the most vulnerable in the workforce, Bill 49 is about the race to the bottom. It is about undermining their already precarious existence, and as such it is totally unacceptable.

These amendments come on the eve of a comprehensive review of the act. The proper procedure would have been to include such changes as part of such a review and not try to pass them off as simple housekeeping changes. Beyond this, the core of the problem is the nature of the amendments themselves. As our comments already make clear, standards shouldn't be eroded, shouldn't be made negotiable; rights shouldn't be made more difficult to obtain; and enforcement of such shouldn't be contracted out or privatized. All this is taking place as part of the overall Harris agenda to shrink the size of government and divest itself of public services. The bottom line means slashing \$10 billion from Ontario's budget to pay for the tax break for the wealthy. Thank you.

The Chair: Thank you for your presentation. I didn't want to cut you off, but we've gone over the 15 minutes. Thank you very much for taking the time to come before us here today.

UNEMPLOYED HELP CENTRE

The Chair: Next up is the Unemployed Help Centre. Good afternoon.

Ms Pamela Pons-Marier: Good afternoon. We appreciate the opportunity to appear before you this afternoon. My name is Pamela Pons-Marier and I have with me Kathy Probe, our assistant director.

As the executive directors of the Unemployed Help Centre in Windsor governing Windsor and Essex county, we continually see the negative effects that high unemployment, cutbacks, layoffs, recessions and absence of job opportunities have on displaced workers. Through no fault of their own, they become the victims of these circumstances. This submission is being made on behalf of unemployed workers, the working poor and the disadvantaged in Windsor-Essex county. The majority of these workers become the victims of unemployment and underemployment by a decrease in the total number of jobs in our communities, fewer employment opportunities, plant and business closures, layoffs, downsizings, cutbacks in government spending, health sector cuts, health sector reconfigurations and changes in government policies such as the one we see before us today, Bill 49.

There's very little hope of finding alternative gainful employment for the thousands of displaced workers who have given years of their life to one employer and suddenly find themselves starting over with insufficient finances to do so. The difficult labour market over the past several years has led to a substantial decline in the full-time labour force. Of course, part-time employment has dramatically increased due to corporate cost-saving measures.

Employers have the edge over our workers as long as our labour market continues to be deprived of sufficient job opportunities. Bill 49, section 3, flexible standards,

makes it easier for employers to take advantage of the workers and it will make it extremely difficult or nearly impossible for workers to enforce their rights. The potential of this amendment alone will take away minimal benefits once protected by law for workers. It will not assist employers to become more competitive, nor will it increase consumer purchasing or lead to higher productivity. It will, however, lead to increased problems in the workplace, it will promote poorer working relationships between the employer and the employees and it offers less than what was once considered a minimum standard of living.

I am sure it is not the will of this government to go down in history as a government that destroyed the rights of workers. It creates an open season for employers to decide what's fair for their workers, without a balance of power, in terms of hours of work, holidays, overtime pay, vacation pay and severance pay. It's been historically proven that employers take advantage of their workers on these very issues. Therefore, it's naive and shortsighted to think that this will not result in further abuse. This is not a position that we should be taking in the 1990s; this is an 1800 position at best. That's when we recognized slavery. We're in a time when we are not to recognize slavery. These are workers, not slaves. If there's no legislation that will prohibit the abuse, we continue to set the stage for this labour.

Many employees making minimum wage will have to work longer hours. It's the only way they can make ends meet. This creates yet another problem; namely, that there isn't enough work to go around. Therefore, is more overtime without adequate compensation the best solution for us all in the long run?

We're here to present one of many examples that demonstrates specifically how the amendments in Bill 49 will affect a human being, and I do mean a human being, not the potential for a slave. Unfortunately this situation is very real. I'm going to provide this example today with a fictional name because we respect the individual and we respect privacy and confidentiality.

1510

For the sake of this hearing, the woman's name is Joan Smith. She had been working for a successful company for over 15 years. Her wages were \$12 an hour. She became a victim of sexual harassment from a co-worker. Initially, she attempted to resolve this situation on her own. Receiving no success with this, she then reported it to her supervisor, expecting it to be resolved. A short time later Joan was given notice of termination effective two weeks following the date of complaint. I'm sure this was just a coincidence. She was advised by her employer that it was due to a surprise shortage of work. She was to receive two weeks of termination pay. Previously the company had required Joan to work overtime on occasion. She had accumulated three months of overtime for which she was to be compensated by lieu time and not by virtual payment. It represented a dollar value in excess of \$6,000 owed to her. Her employer of course conveniently misplaced the records of this overtime.

I'd like to demonstrate the differences and potential outcomes by first comparing Joan's situation with the current employment standards and then comparing it to

the proposed amendments. Under the current system, Joan can file a complaint against the employer to cover her overtime wages. She would be entitled to a maximum of eight weeks' notice or termination pay. Since the employer is only paying for two weeks, this leaves a deficit of over \$3,000. She's entitled to 15 weeks' severance pay, approximately \$7,200. She's entitled to seek resolution and payment via the Ministry of Labour as well as other remedies in civil court for wrongful dismissal and further action against her co-worker for sexual harassment. Joan can file a complaint with employment standards and recover all of her costs, over \$16,000. She also has the critically necessary time to consider pursuing a claim in civil court for the wrongful dismissal and, again, the further action against her co-worker.

Under the amended act, Joan needs to decide whether to pursue her rights through employment standards or elect to proceed through the legal system. To make this vital decision Joan should first seek the opinion of both employment standards and a member of the legal profession. Then she's got to weigh both options to make her decision. The amendment professes that all of this can be done in a short two weeks. I presume that the Ministry of Labour intends to hire a massive number of people since they're going to be able to give this opinion in less than a two-week time frame. Since there's non-sufficient time for Joan to procure legal counsel, Joan will then have to gaze into her crystal ball to make her decision. Her options are to begin a long and expensive court battle with the forfeiture of the ministry enforcement or to accept less than her entitlement via the new Employment Standards Act. Some choice.

For the displaced worker and the working poor, they will be forced to choose the most expeditious and affordable means to recover their money. Typically, filing a claim through employment standards is the common choice because many cannot afford to hire a lawyer. This option is elected because they're in a vulnerable situation while they meet their financial and familial obligations at the risk of waiving their rights to recover that which is truly owed to them.

The new statutory amount that an employee may recover by filing a complaint under the act is a maximum of \$10,000 for amounts owing that include back wages, vacation, severance and termination pay. A minimum amount is still yet to be determined. Joan's owed over \$16,000. An amended act, as cited, will virtually pave the way and legitimize corporate theft. Joan's dilemma: She needs money now. She needs to support her two children. Joan is a single parent. Her other alternative at this point is to go to the local welfare office, not one of which this province should be very proud considering the recent decimation it's made of it.

Joan is the victim in this case. The corporation remains the uncharged, the untouched, the unpunished. They are the corporate criminal. You are suggesting that it is fair in this province to rip off workers and that those who are ripped off should go with no redress.

Joan's choices, as ludicrous as they are, are to accept a loss of over \$6,000 or to proceed with civil action. Of course, legal actions take money. She doesn't have it

because her former employer has her money. Is she to rely on her family and her friends to carry her through this long and arduous process, or is she expected to rely on tuna from food banks that this government refuses to support or recognize? What does she do? Does she choose the quickest way possible to recover some of what is owed to her and let her employer off the hook because some money is better than no money at all? She has two weeks to decide, and already knows that she can't afford a lawyer. She's also aware that with the cutbacks to legal aid, they're not in a position to handle her case.

She was already struggling paycheck to paycheck to support her two children. This amendment encourages Joan's employer and others like them to violate the most basic standards while compounding the difficulties many working poor are experiencing. It opens the door to further sexual harassment and abuse in the workplace.

She wasn't prepared for this, yet she's forced to make her decision based on her immediate financial needs while she struggles to secure alternative employment. To add insult to injury, she'd have to pay for collection services since the amendments include the privatization of this existing government service. The regulations will allow prorating this settlement among the collector, Joan, the former employer and the government. It will mean that people like Joan will be required to pay a fee because of the wrongdoings of an employer.

We must ask, why does our government continue to make policy changes and cutbacks without consideration for the very people these changes will impact?

The implementation of Bill 49 will add yet another financial burden on those who can least afford it. Many are already trying to overcome severe financial difficulties and are trying to maintain a decent standard of living. The implementation of these changes will further erode the minimal entitlements to a basic standard of living and quality of life for all people.

In closing, we applaud the Minister of Labour, Elizabeth Witmer, for recently withdrawing yet another punitive section of Bill 49. I expect that upon conclusion of these hearings she will find the evidence and the courage to respect the workers in this province and withdraw this bill.

The Chair: Thank you very much. That leaves us with just under a minute per caucus to make a comment or ask any question. The questioning this time will commence with the government.

Mr Tascona: Just commenting on your example, that situation, since it's sexual harassment, would be covered under the Human Rights Code, under which there would be some reinstatement.

Ms Pons-Marier: I think the real issue on this, Mr Tascona, is what's happening in the bill, not the issue of the sexual harassment.

Mr Tascona: I think your example — it should be pointed out that an individual who is sexually harassed wouldn't be going under the Employment Standards Act; they would go to the Human Rights Code to get reinstatement. Also, they could go to the Ontario Labour Relations Board —

Ms Pons-Marier: The employer was not the sexual harasser.

Mr Tascona: — and go under the health and safety act to get redress, so that has nothing to do with Bill 49. I just want to put that on the record for that particular example.

Ms Pons-Marier: The employer said he was terminating for shortage of work. This does apply.

Mr Tascona: Those are all my questions.

The Chair: Official opposition?

Mrs Papatello: Thank you, Pamela. First of all, I think you did a terrific job. You can probably understand the government member's sensitivity to the type of example you chose to use today in discussing Bill 49, given recent events at Queen's Park. Having said that, it really is the perfect way to describe how individuals lose in very real examples, and I have no doubt that this is indeed a real example.

Given the last few comments you just made about the repealing of certain sections, could you give me a commentary about what you see as the meaning of the hearings travelling the province after a very significant and contentious portion of the bill was withdrawn by the minister recently? That is the negotiation of the overtime and those things that can be negotiated. That portion was withdrawn. Most of the people who presented to the bill during the hearings have pointed out that that's really a very difficult part. That part has been withdrawn, so what do you see as the overall purpose then of the hearings and the cost of that?

Ms Pons-Marier: I think, Sandra, there are still too many punitive measures contained in the bill. It's my sincere hope that attention is paid to these hearings and that this just isn't a setup and another horse-and-donkey show. If they are really going to listen, then most of those measures will be withdrawn from that bill.

I guess it's up to the government now to show that it has respect for workers in this province. The more people bring examples to the table, it brings reality to the members who put any comments through to this. Hopefully, and we expect, if there's any recognition for workers in this province, this bill will go very quickly to the garbage can.

1520

Mr Christopherson: Pam, thanks very much for the presentation.

Ms Pons-Marier: Thanks, Dave.

Mr Christopherson: I know the work that you do at the centre, having been down there in a previous capacity. We're still having a great deal of difficulty getting through to the government in understanding why reducing the claim period for back pay from two years to six months hurts vulnerable people. It's because they don't file, in 90% of the cases, until they've left employment.

As the director of an unemployed help centre, can you explain from that point of view for the benefit of the government members, what is it that a vulnerable worker faces when they're unemployed if they don't have the skills, particularly if they're a visible minority or if they're a woman? What are some of the circumstances you face when you talk to people who are unemployed? That then shows what people who are currently working but having their rights denied are afraid of facing. What is it that some of the people you deal with on a day-to-

day basis are facing in terms of trying to pick up the pieces of their life and find a job?

Ms Pons-Marier: If we are dealing with a client who — only 80% are literate; 20% of the population in this province of working people is functionally illiterate. For those who can read the documents, the first thing that happens to them with unemployment is that they go through an emotional roller-coaster. One is not prepared at the first drop of the hat when they've lost the job to be able to deal with the extending circumstances. Many of our clients will continue to lie to their family and may go off pretending they're going to work without telling the family they are yet unemployed. Then they face a difficulty, if they qualify for unemployment insurance, of resolving those issues. By the time we resolve the issue with UI, we may be into a couple of months. We still then have to assist them in coping with unemployment. Then trying to move into a position where they have to take care of their rights on their own is not going to happen in the six-month time frame. To reduce that window of opportunity provides no cost savings, provides no protection to workers, and it's astounding that the window is reduced. We fail to understand why there is any reduction.

Mr Christopherson: We've had some people suggest it's going to legalize theft of employee wages.

Ms Pons-Marier: The whole amendment to Bill 49 has done that by saying that the victim becomes the person to pay and the corporation continues to keep an employee's money without being charged.

The Chair: Thank you both for making your presentation here this afternoon.

CANADIAN AUTO WORKERS, LOCAL 195

The Chair: That leads us now to the Canadian Auto Workers, Local 195. Good afternoon.

Mr LaPosta: We're getting a second shot at the can here.

The Chair: The 16th, actually.

Mr Mike Renaud: I've asked Nick to come back up and do the presentation, or at least be here. I noticed the panel didn't have the opportunity for questions due to time. We will shorten ours to some extent on matters that have been a little repetitive — not to say they're not important — and I'll point those out. Nick is also the financial secretary of our local union, which is his other paying, full-time job, so he's certainly properly seated here. The president of our local, who was named to be here, is in Toronto on urgent union business.

I think it important maybe at the end — that's why we'll try to get through this thing — that if there are questions, because of the cross-section of workers the labour council represents and the numbers — before I start I will mention that in our experience we are the largest local union in the CAW in terms of number of workplaces represented; not in terms of the membership but certainly in terms of the number of workplaces represented.

By way of introduction today, my name is Mike Renaud and I'm the first vice-president of CAW Local 195. Our local represents approximately 5,000 workers

encompassing 70 different workplaces. In terms of the nature of the work, it varies quite substantially. Most of our workplaces are auto parts manufacturers, but we also represent workers in food processing, tool-and-die shops, security guards, pharmaceutical and packaging workplaces. We also have now two grocery stores owned by a family, approximately 300 people there. There are a lot of minimum-wage jobs there; we're negotiating our first collective agreement.

As you can see, our experience is quite extensive and varied in itself. In terms of the size of our workplaces, just so you have a clear picture of our makeup, we represent workplaces with workers who number as few as six and as many as 600.

Let me first comment on your proposed changes and then suggest some changes you may want to consider that we believe would help both the economy and the people of our province.

With regard to the limitation periods, I just want to say briefly that the reduction of the time limit an employee has to file a claim from two years to six months is an abrogation of the ministry's duty and obligation. To suggest that an employee who in all likelihood has meagre funds under the circumstances could take his or her employer to court is ludicrous. The act is in place to protect people under these circumstances and this government should not shirk that responsibility.

The government should ensure that the officers of the ministry have the resources and power to enforce the act to promptly recoup moneys clearly owed to employees. Employers who refuse to pay should be dragged into court and fined or jailed. I don't know, unfortunately, the personal background of everybody here at the panel, but I would ask you to try to think of it in terms of a personal nature. If I withheld money that I owed to you, would you be prepared to wait years before receiving it?

We've had numerous cases where that is what's happening. We've had cases where employers have taken money off the cheque for support payments, for credit union deductions etc, kept the money and spent it and then subsequently gone bankrupt in the next two or three months. Then it comes into the enforcement, so there are a couple of pieces of legislation here that need to be intermingled, but that certainly comes under the sphere of the Employment Standards Act enforcement branch. Then what happens in the bankruptcy case is the workers, as you know, are last on the list of creditors. We think something could be done there to move those workers and those cases up to the front.

I suggest to you that if I somehow picked your pocket today of your wallet, the appropriate penalty would be to call the police and have me taken to court and, again, whatever the justice system does. That's what's happening in the workplace today in the case of a lot of workers, and under the premise of being an employer we're really letting some crimes go by.

The maximum claims portion of our presentation, along with the use of private collectors, I'm going to skip and go right to number 4, page 5 of our presentation. Nick covered those essentially verbatim in our report, so again, not to diminish the importance of those, but so not to be repetitive.

With regard to unionized workers denied access: To deny access to workers who are unionized to the Employment Standards Act is prejudicial to those taxpayers. Why should someone not be able to go to the government to ask that a law of the province be enforced? Because they chose to join a union? Why should unions now have to absorb the cost of arbitrators to have companies live up to the laws of the land? This appears to be a rather transparent tactic to further upset the existing delicate balance in most workplaces.

I think we do pretty well in our province with the existing system and in most workplaces with the unions and employers, but I can say to you that it is a daily delicate balance, that it is an adversarial system. That's just the way it is, and that's the system we have to live in, so I think you're throwing something into the mix there that's going to upset that balance.

Which brings us to flexible standards. Although it's been announced that this change has now been tabled until the fall, we are very concerned. Let me suggest that this change should not occur at all. To throw up for grabs the most basic rights for workers in an adversarial relationship like the collective bargaining process is unconscionable. Surely you can understand that the employer is very often in a position of power in the workplace and at times will use that power through the collective bargaining process to erode the progress that workers have made.

Under the threat of lockout workers may feel the need to settle for fewer holidays or longer workdays etc, the things that are covered by the act and are currently protected by the act, so long as the entire package can be seen by someone — we don't know who that someone will be; I assume someone in the ministry — as greater than what the act confers. In actuality, it may be less of a benefit than was enjoyed prior to negotiations but still considered greater than the Employment Standards Act. I think that's a realistic situation if that section of the act is passed. This change is a backwards way of getting at such things as hours of work and will lead to more disruptions in the workplace.

1530

Let us now propose some changes to the act that we believe should be considered.

Termination: Present notice requirements cover up to eight weeks' notice if the period of employment is eight years or more. They should be extended up to 26 weeks' notice if the period of employment is 10 years or more.

Notice requirements for mass layoffs: The present figure of 50 or more employees to trigger the eight weeks' notice should be lowered to 10 or more employees. At the high end of the spectrum, in the event of a termination involving 500 or more employees, the notice requirements should go from 16 weeks to 26 weeks.

We believe that along with this legislation there should be some legislation married, so to speak, with the UI act that workers who are in that situation aren't having their severance and termination pay carved out of their unemployment insurance, so that when a community is hit with a workplace closure that group of people maintains their purchasing power for a little longer period, so that they're

not immediately cut to nothing until their unemployment comes in, and it's reduced now to 50% or 55%. That has an impact, not only on the families, but on the economy of the communities.

Justification provisions in the event of closure: There needs to be some justification process in the event of a closure. The public has a right to know (a) of any grant or loan moneys that were given to the corporation by the government; (b) whether the closure is the result of true financial hardship or just a case of a company leaving our country to go to a country where workers have not yet been able to achieve a decent standard of living.

If a closure is not as a result of true financial hardship, the corporation should have to contribute into a fund managed by the government to assist displaced workers either through retaining or, in the case of older workers, financial assistance in the form of early retirement. We think that's a fair requirement rather than passing that cost on to the taxpayers under those circumstances. We believe these proposals would help with an area's economic stability by providing some maintenance of income during periods of retraining so that workers will maintain purchasing power during adjustment periods before re-entry into the workplace.

The government should increase time off given to workers through the act. This can be done by increasing the number of statutory holidays or increasing the current vacation requirements from two weeks to three weeks. The current average time off in our province and in our country is lower than most of the leading industrialized countries.

Increase maternity leave to one year, again bringing us in line with other countries.

Shorten maximum hours that can be required to work in a week from 48 to 40.

Increase the minimum wage on a regular basis.

Aside from the obvious and much-needed benefits to families and society as a whole, such as more family time etc., these changes would have an almost immediate positive impact on our society.

Remember that for every 50 people who get an extra week of vacation, one person would have to be hired, or that for every woman who took one year off for maternity leave, one person would have to be hired. A shorter workweek would also have a similar effect.

You must realize that every penny of an increase to the minimum wage goes directly and immediately back into our economy in all different directions, as people's purchasing habits are different. However, a decrease or a freeze in the minimum wage goes directly into the savings accounts of businesses or often, in the case of large multinational fast-food restaurants or international department stores, leaves our province and country altogether.

The problem with our current economy is lack of purchasing power for the bulk of consumers. We believe these changes that you have the power to initiate not only make Ontario a better place to live but would kickstart our economy into a long-term upswing.

We wish to express our appreciation for having been given the time to make this presentation and trust you will respond to our proposals in a positive fashion.

We attempted today, Madam Chairperson and committee members, to provide you not only with the human side, which I think everyone here is concerned about, but an economic argument as well. We've always had the position that the Employment Standards Act is a key piece of legislation, and I think that what's before you is an opportunity. We say with all due respect that it's there now for you — we gave our input — to do what you will. It's a different economic alternative.

Mr Hoy: At the top of page 5, where you talk about how unionized workers are denied access, it has been perceived and stated by others during the hearings thus far that this is a form of downloading. Let me just say that this isn't the only area where the government is doing this. The agricultural community has what is known as an agricultural financial protection plan. The farmers put their money into it; the government administers it. Now there are conversations going on where the government would get out of the administration part and download to the farmers to administer a plan against bankruptcy by others. So it's not the only case and it's a foreshadowing of the government's whole agenda. I appreciate your comments today.

Mr Renaud: I'll give you an example. We have a grocery store here. The bulk of those people are making minimum wage. When people envision the CAW or organized labour, very often they think of the Big Three and a lot of protection and a lot of people working there so how could those people be taken advantage of? That's not the case in our experience. We take whoever feels they need a union, so we have workplaces as small as six. The employer does have the power. By far, most employers won't abuse that power, but there are some that will, and I submit to you that it's your responsibility to protect those workers from those abuses.

Mr Christopherson: I appreciate the presentation. It's good to see you again and I congratulate you on the job you're doing representing the workers in this area.

I want to ask for your gut feel about the process that's being entered into. We hear the government continually asking a lot of presenters from the labour movement: "Are you comfortable?" "Are you prepared to recommend?" "Will you participate in these discussions over the next year?" The labour movement, of course, will make its own decisions about that.

I would like to ask your feeling, given the fact of the track record of this government, about what the chances are of any real improvements when you look at Bill 49 and what that did — legalizing scabs again and the right that it took away — which it didn't run on. They had no mandate. They didn't have one day of hearings when they passed that bill, not one day. Their intent to gut the WCB; the fact that they're bringing in workfare; the fact that they're going after health and safety protection; and the fact that now with Bill 49 no consultation, trying to claim that it's housekeeping, didn't want to have any public hearings — all of these things — what is your feeling heading into a year-long discussion with this government about the possibility of any real gains for workers, particularly the most vulnerable?

Mr Renaud: I would like to set aside partisan politics because this legislation is so key. I've always felt that

deeply personally. It's an opportunity for legislators to really help people in a real and a quick fashion all across our province. That's why we gave some examples. I don't know why we — all three parties — haven't taken a harder look at things like increasing maternity leave. We have so many societal problems around child rearing and the trouble that our children are getting into as they get into their teens, parents not being able to be at home to raise their children, and day care. It would help a whole host of things.

We're not jumping ahead of other industrialized — again, we can look at the European countries. I'm just saying that if we can come up to par, it makes our province a better place to live and it does create employment. Aside from being a good thing for our families, it creates some employment. In a lot of ways it's a throw-back to the old days. We live in a day where people aren't having as many children. It may help with those things.

The minimum wage: We've had a minimum wage in our province for a long time and I've never been able to understand that it's well below the poverty level for people in our province. It's a myth to think that it's all young students any more doing the minimum-wage jobs. Very often it's two parents, both having minimum-wage jobs, trying to struggle to raise their kids. Their kids don't have proper nutrition; they can't learn in school. There's a real spiralling effect. And the employers, you have to —

The Vice-Chair: Sorry; I'm going to cut you off, Mr Renaud. We're reserved to about a minute per person here and we're going a little bit beyond that.

Mr Renaud: I'm sorry. One final comment, Madam Chair, on that line of thought: Three or four years ago, as I taught in one of our union programs, one the stats from StatsCan was that McDonald's at the time employed 29,000 employees in Canada. Those are all minimum-wage jobs. When you go in now and when you see people working for minimum wage, it's adults; it's not all young people in school any more.

1540

Mr Tascona: I'd like to thank you for your presentation. It's very well-thought-out, but there's some areas I want to touch base with you on. The techniques of collection have been discussed. It's been grappled with by a number of levels of government. For example, in 1993 the NDP got rid of the collections unit when it was dealing with enforcement and basically gave it to the employment standards officers to enforce. Presently we collect 25 cents on the dollar and the system just isn't working. I share your thoughts with respect to the Bankruptcy Act. Certainly, before an employer should be able to go bankrupt they should satisfy their obligations to their workers, but we don't have control over that, although I know the minister is very attuned to it. The federal government should be acting in that area and it has done nothing.

One area I want to talk about is that the other day we were discussing the enforcement measures. Mr Duncan, the member from Windsor here, was commenting on it, and I'll quote him from Hansard on Wednesday, in Waterloo:

"Mr Duncan: It has not, in my view, been particularly good at protecting vulnerable employees. I guess the question all of us have to ask ourselves, particularly people who represent workers and who speak on behalf of more vulnerable workers, is, what alternatives would we offer to the government? My experience has been that more officers don't necessarily translate to better enforcement, that there have to be some regulatory changes both at the federal and provincial level to do that. Do you have any specific ideas along that line?"

Would you agree with that approach in terms of more isn't better in terms of resources being put into the Employment Standards Act?

Mr Renaud: Without getting into partisan politics, we need to empower the officers of employment standards. It's almost, frankly, a joke now. Sometimes they're flatly refused — an officer of the employment standards or other various ministries, human rights etc — trying to gain access to workplace. We have better access, because we simply walk in, than an officer of the ministry. They get no respect and they need to be empowered. In our brief, we said in clear cases — there are always going to be some that will need to be sorted out, and there are many where employers clearly say: "I've got your money and I'm going to hold on to it as long as I can, because I know the system. I know that I'm not going to be dragged into court. I know my reputation is not going to be damaged. I know I'm not going to be fined, or if I am, I might be fined less than I have of your money."

Mr Tascona: Let me ask you this —

The Vice-Chair: No. Excuse me, Mr Tascona, we're now well over time. We were reserved to a minute per caucus and we got to be two and three, so I don't think we should stretch it any further.

Thank you very much for coming and making your concerns known to the committee.

Mr LaPosta: If the minister is willing, Mr Tascona, we'll be happy to discuss it with her any time.

WINDSOR AND DISTRICT CHAMBER OF COMMERCE

The Vice-Chair: I would ask that the representative from the Windsor and District Chamber of Commerce come forward, please. Good afternoon, sir.

Mr John St Aubin: My name is John St Aubin. I'm chair-elect of the Windsor and District Chamber of Commerce. I'm sure this has been a very long day for you and I will be as brief as possible.

The Windsor and District Chamber of Commerce represents more than 1,000 businesses in our community. It represents large businesses, multinational businesses, small local proprietorships, professional people. Our goal is to establish effective communications between business, labour and government in fostering a better economic climate throughout our community. Our expansive and diverse membership and our grass-roots democratic model of governance solidify the position of the Windsor and District Chamber of Commerce as the voice of business for our community.

The Windsor and District Chamber of Commerce supports Bill 49 as the first step in the government's two-

stage reform of the Employment Standards Act. As legislation has been added to the act over the years, the act has become outdated, cumbersome and distinctly non-user-friendly. Specifically, when any act becomes loaded with exemptions, it's a sure sign of being outdated. This makes it increasingly difficult for any government to deploy its resources efficiently and effectively. We enthusiastically await the second phase of reform and support the stated goals of promoting greater self-reliance and flexibility among workplace parties.

The government has stated that Bill 49 has three goals: to allow the Minister of Labour to administer the Employment Standards Act more resource-efficiently, to promote self-reliance and flexibility among workplace parties, and to simplify and improve some of the act's language. The chamber not only supports these goals but believes that Bill 49 meets them. In doing so, the bill continues to protect minimum employment standards for workers. Any claims that Bill 49 lowers minimum standards are not justifiable from our point of view. On the contrary, for example, one section of the bill dealing with the accrual of rights during pregnancy and parental leave is an enhancement to the generally accepted interpretation of the current right.

The chamber is very supportive of those provisions of Bill 49 which eliminate duplicate claims, limit recovery of moneys to a six-month period and extend the appeal process.

Employers are increasingly and unfairly faced with defending claims of the same nature or for the same remedy in more than one forum. As an aside, efficiency from the employer's point of view, and yes, we certainly want our workers protected, but the efficiency side must take place. The problem is not restricted to employment standards complaints. It also spans a variety of employment-related statutes. However, dealing strictly with the Employment Standards Act, non-union employees are able to have employment standards disputes dealt with by the courts in wrongful dismissal actions, as well as by the employment standards branch. Unionized employees are able to file grievances under a collective agreement to be dealt with in the grievance and arbitration process and may also file complaints with the employment standards branch. Employers are often left vulnerable to defending the same dispute in multiple forums and must bear the associated costs.

The public purse is often also unfairly burdened. In the case of multiple claims in the courts and to the employment standards branch, duplicate public resources are spent. These resources would be more efficiently utilized in a single forum. Given these facts, the chamber supports provisions of Bill 49 which would eliminate the ability to pursue duplicate claims in multiple forums.

The chamber also is very supportive of the proposed provision of Bill 49 which would limit the entitlement to recover money under the act to six months instead of the current two years. The proposed provision places, quite properly, an onus on employees to make complaints in a timely manner. Delays in making complaints often create an unfairness to the employer in providing a defence. In addition, the older the complaint, the longer and more difficult will be the investigation with its subsequent

greater costs. This also moves Ontario in line with Alberta, British Columbia, Manitoba, Newfoundland and Nova Scotia, who have the six-month limitation period.

As an aside, within the workplace, it should be noted that time is busy and the longer a claim is left, it certainly becomes much more difficult for all three parties to discuss. It should be discussed on a very quick basis from the employer's perspective. The three parties I'm referring to, clearly, are the employee, the employer and the union, if there is a union in place.

The chamber is also very supportive of the proposed change in the increased time limit to appeal employment standards officer orders from 15 to 45 days. The increased appeal period provides a more reasonable time in which to: (1) allow both parties to negotiate a settlement in lieu of an appeal; (2) more fully consider the merits of the filing of the appeal; and (3) make the necessary payment of the amount of the order and administration cost to the director in order to apply for the appeal. In many cases, the current 15-day period is simply not enough.

As mentioned previously, the Windsor and District Chamber of Commerce supports Bill 49. We do have some points, mainly dealing with enforcement through the grievance and arbitration procedure, we urge to be clarified, and these are in our mind quite important:

(1) Under the act, employment standards officers have the power to investigate complaints, require production of documents for inspection and make inquiries of any person relevant to the inspection. It is unclear from the proposed amendments whether arbitrators are to be given these powers as well. The chamber believes that the arbitrator should not be taking on this role, as any arbitration hearing will take place only after the various steps of the grievance procedure have been concluded. The grievance procedure ought to take the place of the investigation.

(2) The act is unclear about whether an arbitration decision may be appealed or if it is final and binding and therefore may only be judicially reviewed. The proposed provisions state that an arbitrator may make any order of an employment standards officer. Under the act, officers' orders can be appealed. It could therefore be argued logically that an arbitrator's decision could be appealed.
1550

(3) All collective agreements set out time lines in which grievances must be filed and processed. With the many and varied collective agreements in place, it can be expected that some, and probably many, time lines will differ from those of the act — a very important point. The chamber believes that collective agreement time lines should prevail in order to ensure consistency.

I know in my workplace, we have numerous collective agreements, and unfortunately, each collective agreement has different time lines.

(4) Finally, I would like to repeat that the chamber supports the goal of promoting self-reliance and flexibility. As such, the chamber strongly believes that allowing for a greater right or benefit as a package is a fundamentally important component of allowing workplace parties this flexibility to negotiate agreements which, if viewed separately, would not be in compliance with the act.

Although the proposed amendments of Bill 49 regarding the ability to assess a greater right of benefit as a package will help achieve such a goal, we believe greater clarity is required in this area. We look forward to discussions in this area during phase 2 of the Employment Standards Act reform.

In conclusion, the chamber supports the two-stage process the government is using to reform the Employment Standards Act and supports Bill 49 as the first step in that process. We would, however, like to see more clarity brought to those points we have raised.

One other point: The chamber itself certainly is anxious at any time to dialogue, be it on a committee base such as this, or on other points of consultation of upcoming legislation, and the timeliness of that dialogue must be paramount in the eyes of the government. We certainly believe that your ability to properly hear our comments is a function of time, and time for you to review and analyse what may have been said in the hearings across the province. Thank you.

The Vice-Chair: We have about a minute and a half per caucus starting with Mr Christopherson.

Mr Christopherson: Thank you for your presentation. I think it's interesting to note that of all the presenters we've heard today, I think this is only the second one that does support this.

I want to address the question of your comment in the first paragraph on page 2 where you that "Any claims that Bill 49 lowers minimum standards are not justifiable." Obviously that is refuted by every presenter that has come in, and in some way represents or works with workers in the province, whether union or otherwise. I have some difficulty with that claim, when I think there has been absolute, clear, abundant proof that it is going to impact workers, particularly the most vulnerable, that standards are being lowered, that the maximum cap, regardless of whether there's a good rationale for it, is still a lowering of a right that a worker had before. The same with the minimum thresholds. If they want to seek those amounts elsewhere, they have to pay the court costs, they have to pay the legal fees. They didn't have to pay that before. They're out money. They lose something. The fact that they can't claim for two years of back wages and can only claim for six months is a loss of a benefit. I have a great deal of difficulty understanding how you can stand by a statement that says that any claims that Bill 49 lowers minimum standards are not justifiable, when I think the exact opposite has been proven conclusively in every community we've been in.

Mr St Aubin: Minimum standards are just that. The consensus of our membership — and again, we represent over 1,000 businesses — is that they will continue to treat workers fairly, and that's our membership talking. I'm glad I came early today. I heard the examples of the various union groups that spoke before me, and I respect those examples that were given. But our membership is telling us that in fact the standards act as amended will be a betterment from their point of view and that the minimum standards that they will administer, noting the point of flexibility, will in fact, in their minds, allow a betterment to the workers. I can only quote you.

Mr Christopherson: Fair enough, and with great respect, I can't comment on what's going on in their minds. But the proof is —

The Vice-Chair: Mr Christopherson, I'm sorry, the time has expired.

Mr Christopherson: — the minimum standards are being lowered.

The Vice-Chair: For the government, Mr Shea, please.

Mr Shea: Let me begin by asking a question concerning the way the system currently operates now. A grievance can be launched in two different ways at the same time. It can go through the Employment Standards Act. It can also go through the courts simultaneously. From your membership, is that creating difficulties for them? Is that creating problems?

Mr St Aubin: The consensus of our membership is that yes, it affords variance of avenues and as crisp a procedure as can be put forward would be a betterment from the employer's perspective.

Mr Shea: Given the fact that there are very, very few Employment Standards Act claims that are received at the ministry from unionized workplaces, would it be the sense of your membership that the current grievance procedures in the collective agreements already seem to be working and are dealing with most of the complaints?

Mr St Aubin: Not only the grievance procedure, but many employers are advocating a pre-settlement discussion prior to formal grievance, and if at all possible, that vehicle or the grievance procedure would suffice to an agreeable settlement.

Mr Shea: A concern raised by some —

The Vice-Chair: Excuse me, I'm sorry. Unfortunately, we're running short because presentations are eating up more of the 15 I think than we're acknowledging, but I'm sorry about that.

Mrs Pupatello: Thanks for coming to speak with us today. I wanted to ask you if you support the \$10,000 cap on the claims, that portion that is being presented in Bill 49. Do you support that measure that's being introduced?

Mr St Aubin: I'm not sure if I can comment on that honestly.

Mrs Pupatello: You're supportive of the bill, so I'm assuming you're supportive of that portion of it.

Mr St Aubin: Yes.

Mrs Pupatello: There are several of your member companies in the chamber who act as subtrades, for example, or they are subcontracted to do work. Let's assume that companies go through a bidding process to access a job and let's say they bid on a job that is going to cost \$20,000 to the company. The subcontracted firm goes ahead and does the work that is valued at \$20,000 because they won the bid. After they go forward and do the work, the company that's contracted them chooses, for whatever reason — they can't, they go bankrupt, whatever. They can't pay. It is now law that they're not owed \$20,000 but they can give them \$5,000. It's not all of it but it is \$5,000. As a representative of your chamber businesses, do you believe that your chamber member ought to be given a 75%, perhaps, as an example, decrease in the value of the work that the company did for another firm? In concept, do you believe that?

Mr St Aubin: That is an interesting example.

Mrs Pupatello: Do you believe in that principle, that a company which does work valued at, say, \$20,000 could in effect be paid \$5,000 and that's okay? Do you believe in that?

Mr St Aubin: Rather than answer that question, particularly this morning I had almost the exact same example before me in my place of business. What I'm finding is that there's a tremendous flexibility and there's a tremendous point of negotiation between a general and a subtrade. While I know what you're driving at within your example, I don't see it happening in the real marketplace.

Mrs Pupatello: In fairness, you're a representative of the chamber. I think you have to tell us your opinion on matters that in fact do pertain and are very relevant to the bill that's being presented.

The Vice-Chair: I'm sorry, but the time has expired. Thank you very much for coming forward today and presenting your comments.

1600

WINDSOR BLACK COALITION

The Vice-Chair: I would ask that the representatives from the Windsor Black Coalition come forward, please. Good afternoon and welcome to our proceedings here in Windsor. I would ask for those present that you introduce yourselves, not only for the sake of Hansard but for those present to know who you are and who you represent.

Ms Daphne Clarke: My name is Daphne Clarke, representing the Windsor Urban Alliance, as the president, Mr Clayton Talbert was unable to attend. However, the presentation was drafted by Mr Talbert.

Ms Martha Elliott: I'm Martha Elliott. I'm here representing Windsor Black Coalition on behalf of Mr Clayton Talbert.

Ms Clarke: I have come here to express great concerns regarding what I can only construe as a direct attack on the safety net put in place by the will of the people to protect their basic rights to a safe and healthy work environment, the opportunity to negotiate job descriptions, rates of pay, vacation periods, sick leave and other matters that are significantly important to all people working in Ontario today.

The changes that have been proposed in Bill 49 for the Employment Standards Improvement Act are questionable regarding their real, as opposed to their proposed, intent. There are several areas that will greatly affect the average worker in more ways than one readily apparent at a glance.

The minister, it would appear, decided to further erode the already inadequate protections which were placed in the Employment Standards Act to protect the worker who has the least protection.

Workers and advocates of workers have with great difficulty been able to pressure government administrations over the years to develop and place certain protections in the Employment Standards Act that have had a direct impact on the loss of life and limb in the sweatshops that exist in our country; also to eliminate child labour and put in place guidelines and standards.

They presented employers and employees an area of minimum standards from which they could negotiate the

terms of agreement to develop a mutually agreed upon working contract.

This proposed two-phase project will place individuals who have historically been vulnerable to the whims of employers with regard to the terms of employment and other conditions of the workplace in the precarious position of having to seek expensive legal counsel and assistance. There will be no help coming from legal aid for they will not touch employment problems.

The opportunity for employers to present to employees a safe work environment and ensure that employees would be able to feel secure in that they would have some type of job security has existed since the pre-industrial era.

It is well documented that without intervention the never would have been positive change in the policies of employers to improve working conditions or look at health and safety issues sincerely. Employees were expendable. If someone got sick or was injured they were simply replaced. To believe that employers are now prepared to negotiate sensitive areas with employees in a fair and just manner without a clear and concise set of rules in place to protect workers is absurd.

Furthermore, there must be a body in place prepared to enforce these rules and take to task the employer who for whatever reason breaches them. This body should be accountable to the working people. For this to be the case, the government of Ontario is the only feasible route. To consider a private company which may not be concerned about anything other than the bottom line on the balance sheet, certainly not the interests of the employee can only lead to abuse of the system.

The government has the responsibility to tell working persons the truth about the underlying reasons behind revisiting the Employment Standards Act. I believe that they are attempting to circumvent that responsibility.

In the press release accompanying Bill 49 the labour minister stated: "These changes represent the first part of a two-phase" reform "of the act to cut through years of accumulated red tape, encourage the workplace parties to be more self-reliant in resolving their disputes and make the act more relevant to...the needs of today's workplace." They will also "focus...attention on helping the most vulnerable workers."

The reality is that the changes proposed in Bill 49 will make life a living hell for the most vulnerable workers in Ontario. The workers who decide that they will cite employers for infractions of the Employment Standards Act will have less time to develop their complaints as they get them processed. This will make it much more difficult for workers whose employers have violated the Employment Standards Act to obtain the money they are owed.

The changes in the act are deemed to be minor by the minister. In reality, the changes will make an already impractical system of holding employers accountable for their actions that much more difficult for the employee to accomplish in the time allotted.

An employee who has had the unfortunate experience of having to take an employer before the employment practices branch fully realizes the weakness of this body to bring about a positive resolution to the case presented before it. This is well understood by the largest percentage

tage of employees in Ontario as well as by the lion's share of employers. This results in many infractions not even being addressed at all. Many employees have no faith in the system or the protection the system offers them, should they file a complaint.

Employers constantly take advantage of this phenomenon. As time passes, it is becoming increasingly prevalent, and employers are more aggressive in infringing on the rights of employees and are not very concerned about being held accountable. Even if an employee is fortunate enough to win, collecting the award is certainly not an easy task. More often than not the employer will default on the money owed or in many cases will go bankrupt to avoid paying the settlement.

With the measures that exist being inadequate to compel employers to address problematic areas in their workplace, it is certain that any modification of the standards or compulsory measures which does not add more teeth to the Employment Standards Act will certainly result in a complete breakdown of the standard of living that the people of this province have come to consider as normal.

Statistics show that in 1994-95, 29% of assessments made against employers were not collected. This translates into the following: Of the \$64.3 million assessed, a whopping 74% was not collected. In 1994-95, out of 8,298 employees who were owed money under the Employment Standards Act by their employers, money was collected by the ministry for only 3,552 employees; 56% of employees owed money by their employers did not receive any money from them.

A program that was introduced in 1991, the employee wage protection program, was designed to ensure the employees who were owed money by bankrupt employers might collect some of the money from the fund: up to \$5,000 maximum, including termination and severance pay, per claim. The government, however, reduced the amount an employee can claim from the fund to a maximum of \$2,000, excluding termination and severance pay.

The employee wage protection program is not the most efficient body when it comes to collecting money from employers who owe. The EWPP is funded through the province's consolidated revenue fund and little effort is made to recoup money paid out of the public fund by employers who refuse to pay or have claimed bankruptcy.

We also must question the effectiveness of the employment standards legislation when we take into consideration how effective is the low cost to any violations of the act. Furthermore, the number of inspectors to monitor and investigate infractions is very low. In 1980-81 there were 1,304 routine investigations. Comparably, there were 21 in 1994-95.

All workers in Ontario are going to suffer greatly if in the final analysis Bill 49 is successful in getting passed. Workers have felt the grip of tightening economic pressure as the workplace has been stripped down to the bare essentials in production and management. Engineering has been eliminated from the factory floor.

1610

The reality is that the Employment Standards Act at present is weak and easily abused by employers in an

ongoing fashion. When the government talks about abolishing the red tape that slows the process, they must be saying, "We are going to remove the final vestiges of protection from the act so that employers can do almost anything they want."

The changes included in Bill 49 which the minister suggests will streamline the process basically shift the responsibility for enforcing basic labour standards on to individual employees and place the responsibility for enforcement into the hands of the private collection agencies unaccountable to the employees who seek their assistance.

The money the proposed changes in Bill 49 claim to be saving will be saved by moving costs on to the backs of the most vulnerable workers. The first phase of reform to the Employment Standards Act is designed to soften up Ontario workers for the blow they're about to receive when the second phase comes into being. The second phase will be the end of the already inadequate and insufficient standards provided by the law.

Looking at the development of the employment relationship historically, it is obvious that the relationship has been one where the employer has always had the upper hand. This relationship has not changed drastically over the years. It has not become a clear-cut, well-defined matter to butt heads with an employer that refuses to give you a fair shake in the workplace and get satisfactory results. The employer, knowing that your efforts will end up being frustrating and next to futile in resolving the matter, will usually tell you to do whatever you think you have to do and business will go on as usual.

Employers, having the upper hand economically, were able to offer jobs in their workplaces under conditions that were atrocious, simply telling individuals if they didn't like the way things were, they could go and find another job. Having this type of leverage, employers could maintain their environment where they control the hours worked, the pay schedule and working conditions. Freedom of contract, uncontrolled, did not translate into a situation where the unemployment rate was kept low.

In the 1930s unemployment was extremely high despite the fact that there was no minimum wage or controlled hours of work. Even today there is a huge debate regarding the position that increases in the minimum wage lead to significant job loss.

The Employment Standards Act was not effectively enforced. The use of audits to detect violations is rare. To compound this already intolerable set of circumstances, if an employee does not complain of a violation, it has become fairly common practice that an employer will pay the wages owing and a penalty, or what is called in Bill 49 an administrative charge, of the greater of 10% of wages owing or \$100.

Prosecutions of employers who violate the Employment Standards Act, as I said earlier, are rare and employers take advantage of this. The indicator of this is the fact that over 30% of the employers against whom assessments were ordered simply refused to pay. This creates a climate of arrogance on the part of the employers who have an inclination to take measures to build up the bottom line through whatever measures

necessary. Employers realize that there is little chance of being detected, and even if they are, the cost associated with being detected is minimal.

The challenge for the author of Bill 49 would be to ensure that there's a strong set of disincentives for employers to violate the Employment Standards Act. Where does the employer who attempts to compete in the market in a fair and just manner stand a chance against employers who are prepared to violate the law for profit?

It is obvious who the most vulnerable people are: the employees, and some are more vulnerable than others. Bill 49 will force employees out of the employment standards mechanism and compel them to go into civil courts; that is if they can afford the legal costs involved. It is a much lengthier, more expensive route to take. For many it is more expedient to take the easier way out, as most do, and walk away from the whole matter, accepting the loss as part of doing what you can to keep the job.

The government's position —

The Vice-Chair: Excuse me for a moment, please. I'm not able to find you any more in the text you are reading from. It moved around there for a couple of pages. We are at 17½ minutes now, which is already two and a half minutes over the allotted time. I would be open to maybe wrapping it up, say, within a minute, because I'm not sure where you are any more.

If you want to draw some type of summary statement over the course of a minute, I think that would be acceptable to the committee members.

Ms Clarke: Okay. I'll go to the last page for you. Other provinces such as British Columbia, and the federal jurisdiction, allow employers and unions are to negotiate their own standards on a range of items. Each negotiated standard must be at least as good as that provided in the legislation.

Bill 49 has a new slant. Under it the standards negotiated with a union as a package must be at least as good as the package of standards provided in the Employment Standards Act.

I suggest that the recommendations on pages 22, 23 and 24 be submitted to this august body for consideration and implementation. Those are the pages from the thing that Mr Talbert wants to have included.

I thank you for giving us the opportunity to make this presentation to you.

The Vice-Chair: I take the liberty to ask what you just held up there, where you were referring to pages 22, 23 and 24. Is that something you presented to the committee as an appendix to your submission?

Ms Clarke: I don't think you've got that.

The Vice-Chair: I can't quite tell what that is; I'm sorry. Could you read the title of the bill? It is not that long.

Ms Clarke: It says: "The Real Story: An Analysis of the Impact of Bill 49, the Employment Standards Improvement Act, Upon Unrecognized Workers.

"Professor Judy Fudge, Osgoode Hall Law School 1996."

I have an extra copy.

The Vice-Chair: We have that as a previous submission. If you don't mind, for the sake of the record we'll refer to it as an appendix to your submission.

Ms Clarke: Exactly.

The Vice-Chair: The Fudge report, or submission.

Thank you very much for coming today. Unfortunately now we've well expired the time in terms of potential for questions. However, we will certainly keep your thoughts in mind as we proceed through the hearing process.

There being no other presentations scheduled for today, the hearings are now closed.

The committee adjourned at 1620.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Mr Bart Maves (Niagara Falls PC)

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr John R. O'Toole (Durham East / -Est PC) for Mr Carroll

Mrs Sandra Pupatello (Windsor-Sandwich L) for Mr Lalonde

Mr Derwyn Shea (High Park-Swansea PC) for Mr Maves

Mr Joseph Spina (Brampton North / -Nord PC) for Mr Chudleigh

Also taking part / Autres participants et participantes:

Mr Gary Carr (Oakville South / -Sud PC)

Mr David Cooke (Windsor-Riverside ND)

Clerk / Greffière: Mr Douglas Arnott

Staff / Personnel: Mr Ray McLellan, research officer, Legislative Research Service

CONTENTS

Friday 23 August 1996

Employment Standards Improvement Act, 1996, Bill 49, Mrs Witmer / Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, M^{me} Witmer	R-1077
Chip LeMay; Greg Carroll; Lora Hogan	R-1077
Canadian Auto Workers	R-1078
Mike Belisle	R-1082
Service Employees International Union, Local 210	R-1083
Gerard Charette; Ivan Stark	R-1086
Windsor and Area Coalition for Social Justice	R-1088
Canadian Union of Public Employees — Windsor, Essex and Kent counties	R-1090
Canadian Auto Workers, Local 1973	R-1092
Labourers' International Union of North America, Local 625	R-1094
Windsor Women Working with Immigrant Women	R-1096
Windsor-Sandwich New Democratic Party Riding Association	R-1099
Hotel Employees Restaurant Employees Union, Local 75	R-1101
Business and Professional Women's Clubs of Ontario	R-1104
United Injured Workers' Group — Windsor	R-1105
Canadian Union of Postal Workers	R-1106
United Auto Workers, Local 251	R-1108
Legal Assistance of Windsor	R-1110
Canadian Auto Workers, Local 127	R-1113
Windsor and District Labour Council	R-1116
Unemployed Help Centre	R-1118
Canadian Auto Workers, Local 195	R-1120
Windsor and District Chamber of Commerce	R-1123
Windsor Black Coalition	R-1126



R-25

R-25

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Monday 26 August 1996

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Lundi 26 août 1996

**Standing committee on
resources development**

**Employment Standards
Improvement Act, 1996**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 26 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 26 août 1996

The committee met at 0904 in the Valhalla Inn, Thunder Bay.

EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): Good morning. I call the meeting to order on this, the sixth day of hearings on Bill 49. We're pleased to be here in Thunder Bay and look forward to hearing the presentations throughout the day.

THUNDER BAY CHAMBER OF COMMERCE

The Chair: First up this morning is the Thunder Bay Chamber of Commerce. I invite you to come forward to the table. Good morning. Just a reminder that you have 15 minutes to use as you see fit, divided between either presentation or question and answer period.

Mr Doug Smith: Good morning, ladies and gentlemen. My name is Doug Smith, the chair of the board of directors for the Thunder Bay Chamber of Commerce. With me this morning is the president of our chamber of commerce, Rebecca Johnson. We are pleased to have the opportunity to address you on Bill 49, the Employment Standards Improvement Act, on behalf of the business community.

Our chamber of commerce represents some 950 member organizations and over 1,300 voting representatives.

The general focus for our chamber of commerce during 1996 has been on municipal issues. The Employment Standards Improvement Act, although not a direct municipal issue, is still one of great importance to our membership and to the business community at large for the region of northwestern Ontario. You will hear later today from our umbrella organization, the Northwestern Ontario Associated Chambers of Commerce, and we know that their message will very much parallel our message. We realize the impact on all facets of our province through the passage of this bill and the impact particularly on the business community.

The Thunder Bay Chamber of Commerce congratulates the government in deciding to implement two stages to reform the Employment Standards Act. We support Bill 49 as the first stage of that reform.

We recognize that the act is long overdue for change in the new and changing environment that we are now

encountering. The act is unwieldy and not friendly to the small business owner in its current form. Legislation has been added during the past several years without thorough examination of the way it should be organized. Exemptions appear in several sections.

The Thunder Bay Chamber of Commerce looks towards the second stage of the reform that will provide a tightening of various areas as well as assist the business community, both for the employer and the employee.

Bill 49, as we understand it in its proposed state, has three goals, which we support: first, that the government, through the Ministry of Labour, administer the Employment Standards Act more resourcefully and efficiently; second, that the act will be more flexible and assist the employer and employee in working together within the framework of the legislation; and third, that the act is more simplified and in more current language that is readily understandable.

Bill 49, in undertaking these goals, protects employment standards for the employee. Employee standards are enhanced in several areas. Note section 12, where accrual rates during pregnancy or parental leave are augmented from the rights they currently have.

The Thunder Bay Chamber of Commerce supports the elimination of claim duplication and changes to limitation and appeal periods. Our chamber as well as most others, not only in Ontario but in Canada, has been lobbying for several years that duplication at any level of government be decreased. We are indeed pleased to see that our message is starting to be heard and reacted to. Thank you for recognizing and eliminating the duplicate claims. We are also pleased to see that the recovery of money is limited to a six-month period and that an extension for the appeal period is also included in Bill 49.

Small business, as it is defined, represents 76% of our membership and is currently overburdened with government forms. They are also faced with an increased defence of claims that are similar or render the same solution in numerous forums. This is unacceptable in today's environment for small business as they struggle to survive. Businesses don't have time for this. Government needs to recognize that this is not only happening with employment standards complaints but with other employment-related legislation as well.

Non-unionized employees are allowed to have employment standards disputes dealt with by the courts in actions of wrongful dismissal and the employment standards branch. Unionized employees can file grievances under a collective agreement dealt with in the grievance and arbitration process. They may also file complaints with the employment standards branch.

Business employers, on the other hand, have to defend the same dispute in numerous forums and must also pick up all costs that are involved. The taxpayer must pick up the various forum costs dealing with multiple claims in court and in the employment standards branch. All resources, both financial and union resources, can be better used in a single forum. The Thunder Bay Chamber of Commerce supports the sections of Bill 49 which remove duplicate claims in multiple forums.

0910

Once again government is recognizing the new environment that business is working in and must survive in. You are trying to address the needs that will make the workplace better for all.

The Thunder Bay Chamber of Commerce is pleased to see the provisions in the bill which limit the opportunity to recover money to six months instead of the current two years. The proposed change places, as it should, the responsibility on the employee to make complaints in a timely and convenient manner. Complaints that are delayed create in many instances an unfairness to the employer's defence. Also, the longer the complaint is not identified to the employer, the longer and more difficult is the analysis of that situation. This does not include the probable increase in costs. Businesses do not have the extra financial abilities to support such delays.

Time limits to appeal the employment standards officer's orders from 15 to 45 days is also an improvement. This increase provides more time to allow both the employee and the employer to negotiate an in-lieu settlement of an appeal, consider whether an appeal should be filed and make the required payments to the director in order to apply for an appeal. The current 15-day period is not reasonable for many small businesses. Quite often we are talking about employers who are looking after all facets of their businesses, and the Employment Standards Act is just one component of their regular workday. We applaud the government for taking steps to eliminate duplicate claims and change the appeal periods.

Although we agree with the changes proposed in the Employment Standards Act under Bill 49, there are a few areas that need to be addressed, particularly under section 20, concerning enforcement through the grievance and arbitration procedures. How many officers must business report to? Under the Employment Standards Act, employment standards officers will have the power to investigate claims. They will also be able to inspect documents and discuss the situation with any person involved in that complaint. Will arbitrators be able to do this as well?

The Thunder Bay Chamber of Commerce does not feel that the arbitrator should have this authority. Arbitration hearings should only take place after all other steps of the grievance procedure have taken place. The grievance procedure should take the place of the investigation.

Proposed amendments allow arbitrators the right to enforce the act. We are concerned that arbitrators will not have these rights under some provisions under a collective agreement between an employer and a union. With the wording proposed, an arbitrator has the jurisdiction to make a related employer declaration. This would make more complications and could lengthen the hearing.

Again time and cost must be taken into consideration, time and cost that small businesses do not have.

The related employer provisions are unclear. How can an arbitration decision be appealed or reviewed, or is it final and binding? The proposed wording is unclear in this area.

Collective agreements between employers and unions usually set out time lines in which grievances must be filed and processed. These time lines could be different under the proposed Employment Standards Act.

The Thunder Bay Chamber of Commerce has been working for the past few years to create a better working environment between labour and business within our community. We would like this to continue. Only by working together can we continue to have Thunder Bay grow, particularly economically. We believe that the agreement made between the employer and the employee in a collective agreement should prevail. Grievances should be filed which allege both violations of the Employment Standards Act and the collective agreement. Consistent time lines in such a case are crucial.

We're not sure from the proposed amendments if the arbitrator has the ability to award damages within the six-month recovery period. The Thunder Bay Chamber of Commerce believes that the remedial jurisdiction of arbitrators should be restricted in order to provide equal rights to all employees.

Clarification needs to be made regarding the expedited arbitration pursuant to the Labour Relations Act available for grievances seeking to enforce the Employment Standards Act.

In conclusion, the Thunder Bay Chamber of Commerce suggests that the greater right or benefit assessment be moved as a package to the second stage of the reform. Allowing for a greater right or benefit as a package is a fundamentally important component of allowing the employer and employee the freedom to mutually agree to arrangements which, if viewed separately, would not be in compliance with the Employment Standards Act.

As we originally stated, the Thunder Bay Chamber of Commerce supports the goal of being able to work out an agreement and being flexible. The ability to assess greater right or benefits as a package will help achieve this goal. The proposed amendments require some clarification and expansion in this area. These themes should be part of the second stage of reform.

The Thunder Bay Chamber of Commerce once again extends its thanks to the members of the standing committee for coming to Thunder Bay. We support the two-stage Employment Standards Act reform process and Bill 49 as the first step. We leave you with our comments and questions and look forward to stage 2 and providing further input to you at that time.

The Chair: That leaves us exactly four and a half minutes, so a minute and a half per caucus. We'll commence, as we always do, with the official opposition.

Mr Dwight Duncan (Windsor-Walkerville): Thanks Doug. It's good to see you again. Just a couple of quick comments. First of all, we support the government in its desire to make the act work better. We do part company however, in the notion that the act works better when you reduce minimum standards. Would it be your view that

the vast, vast majority of your members are good employers who probably don't often come up against complaints under the Employment Standards Act?

Mr Smith: That would be my view.

Mr Duncan: I guess the concern I have is, given that you've recommended we take out section 20 and put it into the second stage, and given that the government's removed flexible standards, why wouldn't we do it all at once? Other chambers and other business groups have said, "Let's do it all at once and look at the whole act." If you take out the arbitration, the section 20 thing, which by the way is a theme that we're hearing from business groups everywhere, why wouldn't you put it aside till January, which is now four months away really, and do everything at once, once the discussion paper is out and once we've seen the entire package of government amendments?

Mrs Rebecca Johnson: I don't think there's really any difficulty in if in fact we can incorporate it into the new, when we're looking at something in a couple of months away. I don't think that's a real issue regarding our specific membership.

Just to add to something that Doug has already identified, we can say that we feel our membership and the business community address the needs of the employee, but I guess what we're really looking at within this act is the fact that those employers — and unfortunately there are some — who don't address the needs of the employee, and of course, that's why one has to have legislation.

Mr Tony Martin (Sault Ste Marie): I guess I'm just a little surprised this morning that you're supportive of this initiative by the government, although perhaps I shouldn't be, given the traditional relationship between the chamber of commerce and Conservative politics. When you look at the track record of this government so far and the attack and the pain that communities have felt because of some of the decisions that were made, and ultimately small businesses — I come from Sault Ste Marie, and for example the decision of last July to take 22% away from the poorest of the people who live in our communities, money that they take to buy groceries and pay the rent and keep body and soul together, that ultimately meant a \$2-million reduction in the amount of money circulating in the economy of Sault Ste Marie. The already 1,000 jobs that have been lost in Sault Ste Marie by way of the downsizing of government has meant another \$35 million out of the economy by way of business, and I know that some small businesses have already gone under in Sault Ste Marie and a number of them are struggling; they're hanging on by their fingernails.

Why is it that you would have confidence that anything this government is going to do, looking at its record so far, would be in any way helpful to small business?

Mr Smith: I guess I would respond to that by saying that we're in changing times and the financial reality of our times — people have to be given the opportunity and a playing field where they can provide for themselves and find opportunity for themselves. I don't think anybody looks at these times and necessarily enjoys them, but there is a reality of our world that we have to deal with.

We as a chamber acknowledge the opportunity put forward by the government to try and develop individual opportunities for people, and specifically small business. Again, there's pain in these changing times, and it's a matter of trying to find out what's best and fair for everybody.

0920

Mr Derwyn Shea (High Park-Swansea): Mr Martin's comments notwithstanding, the first year has obviously been spent trying to find all sorts of ways to eliminate all the red tape and bureaucratic and political bungling that the last government foisted upon business in this province, and it's done so, I think, remarkably well.

Let me cut to a couple of issues that are of real concern to us as we go about the province. First of all, there is some question that in the current legislation it is difficult for employees to get proper redress where some unscrupulous businesses — and that's a small number but it's still not insignificant — either go bankrupt and hide behind flawed legislation currently put out by the federal government, or find other ways to dodge giving employees their proper payment of a dollar for a dollar. Can you give the committee any suggestions as to how in fact the legislation might be improved to ensure that indeed employees do have access to a full dollar for the labour that's been performed when companies particularly go bankrupt or find ways to dodge the payment?

Mr Smith: That is a good point because obviously legislation is required because of those minority employers clearly that are abusive. I think the way that you were going with the legislation in terms of allowing them to try and work things out initially is viable, with the opportunity immediately, if they can't work it out, to then have access to either the courts or to the government relations board. I think that, again, as long as — the six-month limitation period is a good move because it forces the issue to come to the table quickly and I think that that's what's important is that they don't linger and take on a life that is undefinable after a while.

The Chair: I'm sorry, Mr Shea, I'm afraid we've run out of time. Thank you very much for taking the time to make a presentation before us here this morning. We appreciate it.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268

The Chair: That takes us to our next group, the Service Employees International Union, Local 268. Good morning. Again, we have 15 minutes for you to use as you see it, either in presentation or question-and-answer period.

Mr Glen Oram: Good morning, and thank you for the opportunity to present the Service Employees International Union, Local 268 perspective on Bill 49, proposed changes to the Employment Standards Act. I've worked as a union representative for Local 268, and our local extends from Sault Ste Marie to the Manitoba border, and we represent about 4,000 members within that area. We represent members in all different aspects of employment: hospitals, nursing homes, school board employees, township employees, employees in the private sector and different areas, so we have a broad perspective that we

deal with. In my role as union representative I deal, on a day-to-day basis, with the problems that employees have in the workplace. I negotiate collective agreements, I negotiate first contracts for newly organized employees, and I come across all the experiences that employees have in both the unionized sector and the non-unionized sector.

I don't have time to comment, obviously, on all the provisions of the act but I'd like to draw your attention to some specific provisions.

One of the first provisions that I would like to deal with is the provision taking away the floor of rights under the Employment Standards Act in collective bargaining situations. If the government continues on with this change in the act, you're going to see, for the first time since the 1940s, strikes for an eight-hour workday; you're going to see strikes for a five-day workweek. Because as soon as this goes on the table, you're going to see employers saying: "Okay, the door is open for us to make alternative arrangements so we're going to put on the table a 12-hour workday. Yes, we may offer this over here as compensation," but you're going to see them put on the table the alternative arrangements like 12-hour workdays. You're going to see them force those issues at the bargaining table to the point of an impasse, because they will now be allowed to do that. At this time, they cannot force those issues to the point of an impasse because it would be illegal under the Employment Standards Act and it would be bargaining in bad faith. But as this changes, you will see strikes over the workday that you haven't seen since 1940. We will regress to that point, and I guarantee that that will happen.

Right now, instead of trying to change these portions of the act, the government should focus on the areas of the act that aren't covered by legislation. There are no provisions in the Employment Standards Act to provide for overtime on a daily basis. An employer can work an employee 16, 17, 18 hours a day and not have to pay them time and a half. There's only provision for weekly overtime. There's not even a provision in the Employment Standards Act for coffee breaks. There's not a provision in the Employment Standards Act for a five-day workweek. It's not in there. If you're going to improve the Employment Standards Act, we should take a look at these areas. We shouldn't be taking away the rights that are under there.

Now, I negotiate first collective agreements a lot of times. When we go into bargaining for a first collective agreement, our starting point is basically the Employment Standards Act, because that's the area that all the employees are covered on. To change that section to take away that floor, our starting point in first contract negotiations changes dramatically. You're going to see the employers coming to the bargaining table with positions way below the floor. So we're going to be starting off below the employment standards and trying to work our way back up. It puts these employees in an incredibly vulnerable situation.

The other area I'd like to talk about is the change to allow the six-month claim, rather than the two years. I see this specifically as a major problem. What you see with employees out there — and I deal with them on a

daily basis. When we organize a new workplace and I sit down and I talk with the employees and what they want to see in their collective agreement, they start telling me things. I say: "You should be already getting that. That's in the Employment Standards Act. You should be getting this; you should be getting that." Most employees don't realize what their rights are under the Employment Standards Act, and by the time they do realize, many times it's past six months. Many times it's further than that and they've been shortchanged for a long period of time. If you think of an employee on a minimum wage, to go back and get that money, they're working for a very small amount of money, and all the dollars that are owing to them are important to them, not just six months' worth.

I understand that the bill has also provided for a minimum claims amount. It's not mentioned in the legislation, but in previous documents I've seen that the government puts out, the recommendation, I understand, was \$100. If that recommendation goes through for the minimum, you can see an employer basically screw an employee out of a statutory holiday. Someone working minimum wage, they can screw him on a statutory holiday every six months and there's not a bloody thing they can do about it. I don't see that as being fair. If you look at the amount of money these people are making, that'll be a real undue hardship to them if that's going to occur.

One of the other reasons why employees don't normally file right away when there's a violation of the act is (1) they don't always know their rights; and (2) they are afraid of repercussions. Because the act does not contain any provision for dismissal without just cause, if an employee files a complaint with the employer, they can wait a little while, and a couple weeks down the road, if the employee hasn't been around too long and he says, "Here's a week's pay. See you later, you're gone, 'bye," there's nothing an employee can do about it. So employees are more concerned, obviously, with their job security. Because there's no just cause provisions in the Employment Standards Act, they're extremely vulnerable when they file complaints against their employers. Many of them — most — that I see wait till they find another job with an employer who's going to abide by the act, then go back and say, "This is what I'm owed." The reason they do that is because they're afraid to get fired. It's plain and simple.

I'd also like to comment about employers who violate the act, in my experience, how many employers violate the act. In the last few years that I've been doing this job, I've experienced that every single employer I deal with has at one time or another violated the Employment Standards Act. With many of them, once we brought it to their attention, we've been able to resolve the situation. But this is not the odd employer who does that. I mean, employers violate the act. Like I said, every single employer I've dealt with has done it at one point or another, so this is not the rare employer who does it. Many times, I admit, it's a mistake on their part. They are not knowledgeable, they don't know the act, as the employees don't, and that's where I come in because I have the knowledge of it to deal with the situation.

0930

I'd like to make some other comments about providing that unionized employees go through the grievance procedure to enforce provisions of the act. This concerns me somewhat because of the cost of labour arbitrations. My experience has been in the last few years that labour arbitrations have gone from being a procedure whereby laypeople have been able to present their arguments to an arbitrator and the hearings are done in a short period of time — well, that's not the case any more.

It's typical to see arbitration cases go six, seven, eight days, and the cost to both the union and the employers are enormous. For that type of hearing, you're into \$10,000 and \$15,000. Many times arbitrations, with the \$10,000 and \$15,000 costs, are over a couple of hundred bucks, and I don't see that as beneficial to the whole process.

Another section of the act, subsection 64(5), allows a union to go to arbitration when they've been certified but haven't got a collective agreement yet. I'd like to point out to the government that the act doesn't provide for any dispute resolution mechanism. When you don't have a collective agreement, you don't have a grievance procedure, you don't have an arbitration procedure. The act does not specify which procedure you go to, whether you're able to go to expedited arbitration or what time limits are on this or where you're to proceed to. I certainly see that as a flaw in the drafting.

Those are about all my comments today.

The Chair: Thank you, Mr Oram. We appreciate it. You've left just over five minutes, so about one and three quarter minutes per caucus. This time the rotation will start with the third party.

Mr Martin: It was good that you came this morning and reminded us, ever so briefly, of all we've achieved so far in the labour relations area to create a level playing field, to create some basis upon which other things are built, I guess to remind us as well that so often we take for granted so much of what organized labour has fought for and worked for over the years that has ultimately accrued to the non-organized workplace: the 40-hour workweek and working eight hours a day. Some people think that was something that was always there and forget that many long and hard battles were fought to achieve those basic underpinnings of labour relations work. Now, with what we've seen already as an attack on the rights of workers in this province, we are getting into the bone of the matter, and this government is beginning to see some of these very basic areas as areas of focus and want to make some changes that ultimately will affect every working man and woman across this province.

When I get calls these days about this piece of legislation, one of the questions is, "This is a piece of work aimed at organized labour." They've got the resources and the wherewithal to just sit down and fight through some of these issues at the bargaining table where they feel that perhaps it is more —

The Chair: Mr Martin, can you pose your question? We're over our time already.

Mr Martin: How do you see this? What are the most salient points in this legislation will affect the non-organized workplaces of this province the most?

Mr Oram: The area that I see that's going to affect unorganized workers the most is obviously the limit on the amount of claims, the six-month limit. Whatever minimum limit the government's going to establish, I take it, is going to be established under regulations. I have no idea what that limit is, but I understand it was recommended at \$100, something like that. So for a minimum-wage worker — most of the people under employment standards are minimum-wage workers — I think those provisions will affect them the most. I think it's really unfair not to know at this time what minimum amount the government is going to propose, and the fact that they have the power to do that under regulations scares me.

Mr John R. Baird (Nepean): Thank you very much, sir, for your presentation. The current Employment Standards Act does have a very strong no-reprisal clause in it, and we would certainly welcome from you any suggestions on how that could be strengthened. I know it's an area that all three parties, when they were in government, have looked at. If there's something the last three governments haven't seen that you could contribute, I know we'd be pleased to learn more about it.

With respect to the minimum, at the current time there's no intention to put a minimum, but there are certainly in the bill provisions to allow such. I guess the feeling is that if someone were to make a claim for, for example, \$25, would it make sense to spend \$500 or \$1,000 conducting an investigation and enforcing an order? Would that be the best use of taxpayers' money? One previous presenter even said it would be cheaper just to write them a cheque rather than investigating if someone came forward with a claim for \$25, for example.

Just a third point. You mentioned that in the bill there were no provisions to negotiate a settlement in a non-unionized situation. I can certainly indicate that under Bill 49 employment standards officers will be given the power to resolve a complaint, upon the mutual agreement of both parties, before the complaint investigation is completed and that these settlements would be binding on both parties. That's something I completely agree with your comments on, that there's got to be flexibility within the act, and that an employment standards officer can go to an employer and say, "This has been the complaint," and on some occasions — not enough, but on some, even many occasions — the employer would say: "Listen, it's an honest mistake. I'm happy to pay right away." Certainly with increased enforcement of the act we hope we'll see more of that.

Mr Oram: I'd like to address your comment about the \$25. Obviously, if there's some minimum out there — I keep referring back to the document I've seen that recommended \$100 — to a minimum-wage worker \$25 is a heck of a lot of money. That's the difference between being able to buy groceries at the end of the month and not being able to. I think any amount of money owed to an employee for wages they've worked for is worth going after. I don't think there should be absolutely any minimum, and if the government puts in a minimum and it's told to the employer. "The minimum amount's \$100, but you owe this person 50 bucks," I know what most

employers are going to say. They're going to say, "Forget it."

Mr Baird: We certainly need safeguards in that, I completely agree. I did calculate, though, your example of worker working six months for minimum wage, and the 4% vacation pay would be almost \$250. Fortunately, that wouldn't be an example.

Mr Oram: One statutory holiday, at \$6.70 an hour, calculate that out and that's under \$100.

Mr Baird: But there's more than one statutory holiday in six months, isn't there?

Mr Oram: Yes, but they may pay them for some and not pay them for others.

Mr Duncan: A theme that's emerging from a number of labour organizations is this notion that the government is setting up a climate where more issues will now be on the bargaining table, especially if in phase 2 of their reforms they proceed with the so-called flexible standards issue. Would it be your view that these amendments, if allowed to go through, will (1) in fact cause more difficulty at the bargaining table, and (2) lead to more time lost to strikes, work actions, work stoppages, whatever?

Mr Oram: Absolutely. I think when the employers sit down at the bargaining table and start to take away rights that employees have had for years, and we're talking about a 40-hour workweek and an eight-hour day, when those types of rights come to the bargaining table and the employers want to change these, you guarantee there will be strikes. If employers want to start putting in 12-hour shifts and 10-hour shifts and seven days in a row, there will be, absolutely.

0940

Mr Duncan: We concur with your view that there is a reduction of minimum standards for employees in Ontario. Given that you organize many workplaces that are probably minimum-wage jobs before you get there, would it be your view that there are ways in which we could improve the efficient operation of the statute, amend the statute to make it serve both workplace parties better without reducing those standards? Would your union be prepared to undertake those kinds of discussions?

Mr Oram: If we were asked to say what areas we see are deficient in the Employment Standards Act and what areas we see should be improved, we would certainly be more than willing to provide examples to anybody who asked us where improvements need to be made. I would certainly undertake that our organization would participate in recommending where positive changes to the Employment Standards Act need to be made, rather than these types of changes, which are negative. It's certainly not an act to improve the Employment Standards Act unless you happen to be an unscrupulous employer who doesn't abide by the act; then it is in fact an improvement.

The Chair: Thank you, Mr Oram, for coming before us here this morning. We appreciate it.

FMB LABOUR ADJUSTMENT SERVICES

The Chair: Next up will be FMB Labour Adjustment Services. Again, just a reminder, the 15 minutes are yours

to divide as you see fit between presentation or question and answer.

Mr Francis Bell: My name is Francis Bell. I am the owner of FMB Labour Adjustment Services. I want to first tell you that FMB Labour Adjustment Services came out of the ashes of the shutting down of the Shebandowan mine. It was a unionized workplace, but the employer didn't want to pay the severance pay provisions that were inside the collective agreement as well as the severance pay provisions inside the Employment Standards Act.

What's really interesting is that the employer's attitude was, "Go to arbitration; you can resolve it there." We spent six days doing preliminary arguments about whether we could arbitrate it, because it was an employment standards issue. I think that tells you something. That cost the local union, for the arbitration, a significant number of dollars.

For the people I represented at that time as union president, the result was that this employer also said, "I'm not going to provide any type of assistance in helping people get jobs." Three hundred workers lost their jobs.

Because of the time limits today, I'm going to move along pretty quickly through my presentation. I've provided you a copy of it and I'll call out the pages as I go through them for your information.

I'd like to first go to the overview. The purported reason for the latest changes by the new government of the Honourable Mike Harris is to improve the Employment Standards Act. As a labour consultant, I have to ask myself out loud, who is going to enjoy the fruits of the government's labour? I would also have to ask, is this a win-win situation that's going to create stability in labour relations or is it going to create turmoil?

I would like to suggest to you that collective agreements that are this size, if you keep up the same process, they're going to be this size. And you know who wins on that? The lawyers. For you who are lawyers, I apologize, but you're the ones who are going to win, the reason being that lawyers like to do appeals. Lawyers can make money off it. The person earning minimum wage certainly won't. The small local union won't be able to afford the legal costs. I want to think that's a good reason.

I'd like to move now to page 7 and case study 1. These are three cases I've dealt with in the last year. I wanted to bring them to your attention so we're talking about real things, talking about common sense here.

This is about a male individual who worked in the construction industry for a non-union employer. The individual had seen the employer challenge a workplace injury and threaten another worker for filing a WCB claim. The employees were told that they showed no loyalty towards the company and they could be replaced in the batting of an eyelash.

The worker came to me and indicated that he had worked six days a week, eight to 12 hours per day, at a minimum of 60 hours per week, for a three-month seasonal rush. The worker was not paid any overtime. The worker was also docked one hour per day for lunch when he was told he could only have 30 minutes for lunch. He is married, is the sole breadwinner and has the responsibility of providing for his wife and children.

He has indicated that he is scared to lose his job and does not want to upset his employer since he's not sure he will be able to find another job in his field. His co-worker who filed the workers' compensation claim has been unable to find employment in his field after departing from his employer. I want to add that the departure was not of the co-worker's choice. The co-worker had to uproot his family and has now found employment some 800 miles away from this town. That was the first place he could find work.

I believe anyone would agree that this worker who complained to myself is entitled to overtime pay at a minimum of one and a half times basic salary for hours that exceed 44 hours per week. He is frightened to proceed under today's legislation to file a complaint with the employment standards branch but is currently attempting to find work in another field. He has indicated that once he does find work he will seek the assistance of the employment standards branch. Should this worker be penalized because the current legislation does not adequately protect the workers?

If you talk about protection, it's nice to have it written down, folks, but when you get fired and you can't put a meal on the table, you can't pay for your house and you lose your house, you lose your car, that little paper it's written on doesn't mean much. You might win two years down the road, but in the meantime what do you do? I'm going to give you some suggestions on how you correct these problems later.

Does the current government wish to help the situation? Does this current government want to stop the abuse of employees? If an employee is owed a dollar, he deserves a dollar; not 50 cents bargained on his behalf, not 25 cents on the dollar — a dollar for a dollar.

Case number 2: This deals with a female contract employee who's been hired by a public sector employer. The public sector employer has full-time employees who are represented by a union and has bargained that anyone who does not belong to the union but does bargaining unit work and is employed as a contract worker has to pay the equivalent of monthly union dues.

The employer controls the workload and the minimum hours of work that are expected from the contract employee. The result is that the employee, on a regular basis, exceeds her regular hours per day and per week with no extra remuneration. Since this is an ongoing situation and the contract renewal process requires reapplication, this person is not prepared to go to the employment standards branch. I wonder why. Guess what? When you have to apply for your new contract and you've filed a complaint, you just might not get that new contract. It sounds like something that happens to construction workers: "Keep quiet, be happy with what you've got, because if you file a complaint you ain't going to get hired for the next job."

This pressure for having to work excessive hours and not receiving remuneration, for no vacation pay in three years, no vacation time in three years, results in pressure at home. It results in pressure from her colleagues at work saying: "Why are you doing this? If you keep this up, we're going to have to do the same type of thing." Everybody loses.

What's the long-term result? I've told this individual: (a) She should file a complaint; (b) she should file a compensation claim; and (c) she should also seek professional mental health assistance. She's at the point that happens to a lot of people, that they end up having breakdowns because of the fact that they can't handle the stress and the pressure. That's the type of pressure people are put under.

Case number 3 involves an injured worker who was retrained as a social worker. I want to put this in some perspective. Part-time work is the new global reality, isn't it? We can have three, four part-time jobs, and might make 40 hours a week, but that's okay. This is what happens: This lady has a \$1-a-year future economic loss award. For those who don't understand compensation, what they say is that she can return back and get close to her pre-accident earnings. She's going to do it with multiple employers.

She had to purchase a pager. She has 15 minutes to respond to the call on the pager to say, "I'm available for work." She has 30 minutes to show up. She's on call 24 hours a day, seven days a week. This lady has worked multiple shifts for multiple employers. She's worked as many as 32 hours straight; no overtime pay because they're all different employers. Is it safe? I would think not. I hope you would think not too. Does it show common sense? The answer is no. What it does show is the type of problems we're leading to in society.

0950

These employers have a minimum full-time staff and they work with part-time and casuals because it's cost-efficient. The result is that her family says they don't have to include mom in any of the plans, the reason being, "We don't know if mom's going to be available anyway, so why make plans that include mom?" She's being frozen out of her own family because she's a multiple-employer, part-time, casual worker.

The Employment Standards Act doesn't protect her. The Occupational Health and Safety Act doesn't protect her. The Workers' Compensation Act doesn't protect her. Guess what? The government's failed. You haven't protected a worker. You haven't protected this lady, you haven't protected the guy and you haven't protected the other lady. The Employment Standards Act doesn't work because there's the opportunity for retribution. People today live from paycheck to paycheck. They don't sit in the bank with \$25,000, \$30,000, \$50,000; they don't have RRSPs. People who earn minimum wage or just above minimum wage are not in that type of financial position. The result is that they pay for it. Is the aim of the new proposed legislation to protect workers? You and I both know the answer: The boss can say, "I'm safe to do what I want as long as no one complains." Are workers going to complain in today's climate? The answer is no.

Going on to page 10, with your new legislation that you're proposing, the language will be this: Workers are chattel. They can be bought and discarded at the employer's will. There are no minimums. Employers can do whatever they want without fear of legal redress, and that's the reality of it. What the boss says goes.

With regard to your collection agencies, I don't know who came up with that farfetched idea, but I can tell you that workers won't get dollar per dollar. The graphic at the bottom puts it in real precise terms. For those people who can't see the graphic, it has somebody pulling the money out, a good percentage of the money that was being collected, and somebody getting the boot. I can tell you who's pulling the money out, and that's the collection agency, so the worker is not going to get the dollar per dollar. Guess who's going to get the boot. It's going to be the worker.

On the other side of it, because you haven't done a good job, folks, the small employer is going to get the boot. I represent firms that have fewer than five people and I can tell you right now, from a small employer's perspective, that if I don't know where the legislation's going to go and I don't know how it's going to be interpreted, I may want to take a chance. If I take a chance, am I prepared to have that financial day that comes when all of a sudden I have to pay some money and can't afford to do it? Do I get to bargain or does the employee say no and then I have to get myself in a financial crisis? Because the legislation isn't written clearly, it's not written distinctly and you haven't made up your mind what you want to do.

Do you want to protect workers and do you want to make sure people get paid for everything they're owed, or do you want to make it a legal choice? We can hire some lawyers to make some decisions for us, and when the lawyers don't like the decisions they can appeal them to the courts, and they can go to the court above that. Meanwhile, everybody loses in the same time.

I've got some recommendations on page 11 for you. One is that this legislation needs to be redrafted in either the purpose clause or the sections of the act, depending upon what the government wishes to do with this legislation. Redraft it and say what you really want to do. If you want to improve it and help workers, make your legislation do that. If you don't want to improve it, if you want to make it so that employers don't have to pay, then have the common sense to say exactly that: Employers aren't going to have to pay and minimum standards don't really matter. Make up your mind, walk down the plank and take your choice.

The second recommendation is to draft the legislation in such a manner to get rid of weasel words. Those are lawyers' phrases: ifs, ands, buts, shalls, maybes. They don't say much to a worker, but they certainly say a lot to a lawyer. Get rid of those words. Very succinct, short, accurate sentences, folks. Are you writing this for lawyers or are you writing this for the workers and the employers of this province? Guess what? If you write it for the workers and the employers, you can write very short, distinct sentences, not with double meaning, and everybody will understand it. Guess who won't be having so much work. It's going to be the lawyers. If you write it the way you've drafted it now, the only one who's going to succeed is the lawyers.

The third recommendation is to be honest and forthright. This government came to power saying it believed in common sense. Common sense tells me that if you write, "I'm walking down the road," that's what you're

doing. You don't say, "I may walk down or up or across or around the road"; you say, "I'm walking down the road."

My conclusion, and that's on page 12, is: Does this government wish to have people treated as chattel property, disposable at will, or are workers an important part of the working fabric in Ontario and deserve to be treated with dignity and respect? You have to make the choice. With all reference to the two opposition parties, because this government controls the Legislature, it controls the legislative agenda. They can offer suggestions, but the reality is that it's your government's choice.

In conclusion, I would have to say that this legislation is not for workers, it's not for employers; it's for lawyers and that's why we have a problem today. Every time somebody amends this, they write it for lawyers. They don't write it for the people who have to work with this stuff day in and day out. You have an opportunity, folks. Wake up, take the challenge and take advantage of that opportunity. Hold off this package. Put it in one package. Write it with some common sense and, most importantly, write it so the layperson can understand it. Workers and employers do not need labour lawyers, employment lawyers, management lawyers, labour consultants; workers and employers need plain, clean, simple language.

The Chair: Thank you, Mr Bell. We've actually gone over, but I will allow a 15- or 20-second brief response from each of the parties.

Mr Baird: Thank you very much for your presentation. On page 10 you asked who would pay for the fees of collection agents, the workers or the deadbeat employers. It'll be the deadbeat employers, as per the legislation. That's important to know. I guess with respect to the collection agents, this government isn't satisfied with collecting 25 cents on the dollar for workers. It's been that way for many years under the previous government. Under this government we think we can do a better job than 25 cents on the dollar, and that's why we think collection agents would do a better job.

Mr Bell: I worked for a collection agency at one time in my profession.

Mr Baird: Did you collect more than 25 cents on the dollar?

Mr Bell: We were making settlements on 10 cents on the dollar. That's the reality of the collection business.

Mr Baird: So has the ministry, by the way, over the last number of years under both governments.

Mr Duncan: Thank you for your presentation. The one thing that struck me about your presentation that is a relatively unique comment is the notion of its impact and the red tape the government will be creating, and how — not deliberately — the consequence of some of these amendments will be to create a situation whereby collective agreements start to govern more aspects of the workplace where there's a union in place. As was said by a previous union delegation today and has been said repeatedly to us as we've travelled the province, collective bargaining will be undermined, there will be more issues on the table, likely more work actions and, just generally speaking, a situation that eventually employers will find very difficult to cope with.

Mr Martin: I think anybody who studies the foundation upon which a good economy is built will tell you — and certainly it's been my experience — that some of the characteristics are stability, healthy and happy workers, a good relationship between the worker and the employer. Will this legislation take us in that direction or take us away from that direction?

Mr Bell: This legislation will take us to the 1969 Inco Steelworkers strike, that type of relationship — nine months, violent strikes — and it will also take us to the situation where workers will not show any loyalty to an employer and employers will not be showing loyalty. The result is that we're going to have production go down in this province, and then people are going to be saying, "Why is our economy in trouble?" This type of legislation is what leads to that.

The Chair: Thank you, Mr Bell, for taking the time to appear before us here today.

1000

NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE

The Chair: That leads us now to the Northwestern Ontario Associated Chambers of Commerce. Good morning.

Mr Jack Mallon: Thank you. In my role as treasurer, I really don't have a lot of experience in labour negotiations, so I'm enjoying this morning and learning both sides of the coin. As the owner of several small businesses, however, I am quite proud to make this presentation today on behalf of my fellow businesses.

I'd like to begin by introducing myself and my colleague. I'm Jack Mallon, treasurer of the Northwestern Ontario Associated Chambers of Commerce. Sitting with me is Rebecca Johnson, our executive director on an interim basis for that organization.

It is with great pleasure that I am speaking to you as a representative of NOACC; that's the short form for the Northwestern Ontario Associated Chambers of Commerce. On behalf of our diverse business community in northwestern Ontario, I would like to acquaint you with our organization. We are composed of approximately 14 community chambers with over 2,000 members covering the geographic area from the Manitoba border in the west to Manitouwadge in the east. NOACC serves as a lobbyist group as well as providing networking opportunities among its membership. The organization works on behalf of the membership for the economic betterment of this part of the province. We have traditionally met on an annual basis with the provincial cabinet during the past 55 years; 1995 was an exception with the new government. However, we look forward to this annual event continuing in the fall of 1996; we've been assured that we're going to continue that tradition. We also meet with the opposition parties as well and we look forward to that carrying the messages of northwestern Ontario business concerns.

I appear before you this morning representing the NOACC membership to support Bill 49. On behalf of myself personally, my past involvement with the chamber of commerce, being the past president of the Thunder Bay chamber, one of the things we tried to do, and I

thought we did very well, was start to work with the workers and the unions. We came to the conclusion that we are a team, we're in this together — employers and workers. That's very important to me as a person and I'll do anything I can to make that team do better in the future.

The act has been in need of revision for some time now. As it is outdated, the act has proven to be inefficient in our constantly changing economic environment. Bill 49 offers changes to the act that we believe are in the interests of both the workers and employers in Ontario. We feel that's fair. The Northwestern Ontario Associated Chambers of Commerce applauds the government's action in undertaking the reform process of the Employment Standards Act. We believe it is the logical first step in allowing the administration of the act to be more user-friendly for the increasing number of small business owners. I heard that from the last gentleman here. Put it in simple language so we can all understand it and make it friendly.

We also congratulate the government on listening to the concerns of the small business owner. A little side note: You'd be amazed at how many people who used to be in a union are now small business owners. As a fallout of these jobs, we're getting more and more of these people joining us, so I'm very happy about that. They're now under the category of business owners.

These employers work long, hard hours trying to successfully operate a business. I don't have to tell you how tough that is today. It is tough. By eliminating duplicate claims and lengthening the appeal periods, Bill 49 proposes to assist the small business owner by simplifying the administration process. I can't underline that enough.

In support of the goals outlined in the proposed legislation, we maintain that Bill 49 will not only protect minimum employment standards for workers, but it will strengthen those standards. It will allow the Ministry of Labour to target resources towards employers, individuals and small businesses that are in need of assistance.

Within the current framework of the legislation, small businesses are unjustly burdened with a duplication of time-consuming government forms; it's just driving us crazy. In addition, employers are faced time and again with defending similar claims, often with the same resolution. The problem is not restricted only to employment standard complaints, but also exists in a wide variety of related statutes. If you have any more of these hearings on other matters, we'll be here saying the same thing about them.

In the case of non-unionized employees wrongfully dismissed, employment standards disputes are dealt with in the courts as well as by the employment standards branch. Unionized employees can file grievances under a collective agreement to be dealt with in the grievance and arbitration process. In addition, they may file complaints with the employment standards branch.

Employers are often subjected to defending a recurring dispute in multiple forums. They are responsible for the cost of the grievance process. Not only does the employer suffer from this inefficient process; the public is also unfairly burdened. In the case of multiple claims, dupli-

cate public resources are spent, resources more efficiently utilized in a single forum.

To this degree, the Northwestern Ontario Associated Chambers of Commerce fully supports those provisions of Bill 49 which call for the elimination of duplicate claims. We would also like to thank the government for recognizing the need to limit the recovery of money to a six-month period instead of two years and extending the appeal period from 15 to 45 days. We're small businesses. We're working all day long. The man said lawyers. We have to get people involved. We just can't do it that fast. I wish we could, but we can't. So the 45 days makes a lot of sense to me and to our organization.

In both proposed changes, small business benefits. Delays in making complaints often creates a difficulty for the employer in establishing a defence. Additionally, the increase in the appeal time limit is an improvement that we strongly support. Not only does it allow both involved parties to negotiate a settlement during that period; it also provides more time to fully consider the merits of filing an appeal as well as the time to make the necessary payments to apply for the appeal. I guess common sense kind of kicks in here.

As I have mentioned, the Northwestern Ontario Associated Chambers of Commerce support Bill 49 as the first stage of the reform of the Employment Standards Act. Upon close inspection of the proposal, we believe some areas of Bill 49 require clarification.

The Northwestern Ontario Associated Chambers of Commerce would like to direct your attention to section 20 of the bill, which raises some areas of concern regarding the enforcement of the act.

Firstly, under the act employment standards officers have the power to investigate complaints, inspect documents and make relevant inquiries for the inspection. However, it is unclear whether arbitrators will also be given these powers. We propose that the arbitrator not be given this authority. Any arbitration hearing will take place after all other steps of the grievance procedure have been completed. Therefore, the grievance procedure should replace the investigation.

Secondly, under the proposed amendments arbitrators have jurisdiction to enforce the entire act. We believe there are some provisions that should not be enforceable by an arbitrator under a collective agreement between an employer and a union. This could unnecessarily complicate and lengthen hearings, thus undoing the goals of the proposed amendments.

Thirdly, the wording of the act is indecisive in regard to the process to appeal or review an arbitration decision. Under the proposed provisions, an arbitrator may make any order of an employment standards officer. Under the act, an officer's orders may be appealed. Therefore, it is unclear whether an arbitration decision may be appealed or if it is final and binding.

We are unsure as to whether the time lines outlined in the act or those outlined in a collective agreement prevail. We propose that the agreement made between the employer and the employee in a collective agreement should take priority to ensure consistency. There are those times when grievances may be filed which suggest both violations of the act and the collective agreement. In such cases, consistent time limits would be imperative.

Additionally, we are not resolved on the proposed amendments regarding the arbitrator's ability to award damages restricted to the six-month recovery limit. The Northwestern Ontario Associated Chambers of Commerce proposes that the arbitrator's remedial jurisdiction should be restricted to provide equal rights to all employees.

1010

Furthermore, we are unclear on another amendment: Is expedited arbitration pursuant to the Labour Relations Act available for grievances that seek to enforce the Employment Standards Act? The section regarding these proposed amendments requires some clarification.

Lastly, the Northwestern Ontario Associated Chambers of Commerce supports moving the provisions of Bill 49 to allow for greater right or benefit assessment as a package. This will provide the employer and the employee with the freedom to agree to arrangements that viewed separately would not comply within the framework of the act.

By allowing for a greater right or benefit as a package, the act's goal of promoting self-reliance and flexibility can be successfully achieved. However, it is necessary to clarify and expand upon the proposed amendments in Bill 49 before this goal is possible. Therefore, we suggest that this proposal be implemented in the second stage of reform.

In conclusion, I would like to thank the standing committee for honouring us with this opportunity to address Bill 49 and I would like to stress that the Northwestern Ontario Associated Chambers of Commerce supports the two-stage reform process to amend the Employment Standards Act. We agree that Bill 49 is a strong first step in that process. We urge you to consider the concerns we have voiced today and hope you will reconsider the amendments we suggested to clarify the act to benefit Ontario's business communities.

Mr Pat Hoy (Essex-Kent): Good morning. It's a pleasure to be here in Thunder Bay and hear all of the participants today. You opened your statement by talking about teamwork. We've heard this theme over and over, in general terms, that management, employees and employers have worked well in Ontario, both in the organized and unorganized areas. Unfortunately, there are those who don't enjoy that great teamwork that goes on, so we need legislation to protect people, both employers and employees, from unscrupulous persons.

We hear a lot about awareness, whether employers or employees are aware of their responsibilities. It's tough being in small business; I recognize that. I read that the failure rate among small businesses at one time, some years ago, was about 80%.

Would it be fair to say that people starting out in small business spend more time, perhaps, looking at the site of where the business should be located, the product, who they purchase it from, how they're going to sell it, hiring an accountant to make sure that certain aspects of the business are ongoing, and perhaps they're involved in franchising and all these types of matters, and maybe do not put enough time on the employment rights that they have as employers and must deliver to their employees? Do you think it's last on their list of priorities as they start out?

Mr Mallon: I have a couple of businesses. We have to spend a lot of time on the employee-employer relationship, customer service, their rights, the holidays and part-time and how many hours, and being fair, and someone's sick and all that. I for one think we spend as equal amount of time on that as we do on dealing with our bank or dealing with our customers. They're our assets, you see. Without them, what are we? We're nothing. It's important that they're part of the team, and I mean that sincerely. I wish a lot more people who own businesses would take that attitude, but that's certainly the attitude I take.

Mr Martin: Thanks for coming today. Certainly, it's important that we hear from you who represent small business because there isn't a riding in the province right now that isn't dependent on small business to generate economic activity and to keep the economy going. I appreciate your concerns in the economy that we're experiencing right now, because in my own community, as I go around and talk to small business people, they're really worried, any of them, that they're still able to hang on to what they have.

Does it not concern you that this piece of legislation is a continuation of a pattern that this government has set that polarizes labour from management, that polarizes business from workers? You suggested here that this will be in the best interests of both workers and employers. To a person so far, this committee, and I suggest it will continue, has heard that the workers do not agree with this. Nobody who calls himself a worker in this province agrees with this legislation. Are you not concerned about the instability that that will create and the need for stability at this time in our economy?

Mr Mallon: You have the advantage of doing this for a living; I have the advantage of doing this occasionally. You're saying things that I don't know. I don't know what the workers feel across the country, across the province. I only know that if we don't get our act together in this province of ours, and that means the employers and the employees being on one team, it doesn't matter what legislation you have, you'll have nobody working it anyway. That's my simple attitude. I don't want to be flippant about it, but I'm very, very concerned that if we don't drop the gloves and put these damned agendas over there on that table and get to work with trying to kick the butt out of everybody else, we're in big trouble. How in hell do we do that?

Mr John O'Toole (Durham East): Thank you very much, Jack, Rebecca. It's a pleasure to be here in Thunder Bay. I think it's important, listening this morning, that I've heard several presenters indicate that the greater rights provision — we refer to it as subsection (3) — be moved to the second phase. Indeed I'm not sure whether the press up here has picked it up, but the minister last Monday, in opening up the debate or discussions in public hearings, did make it very clear that with her discussions with the leaders in management and the union movement, it would be moved to phase 2 of the discussion process. So subsection (3), the greater rights provision, has been moved to the second phase of the Employment Standards Act discussion.

That being said, I really believe there is a willingness on both the employers' side and, I believe, the employees' side to work together because of the tight economy we're in, the competitiveness. The world of work is changing, small business is creating most of the jobs, so there is a new climate. I believe the minister in these hearings is all about listening, and I appreciate your being here this morning. Thank you very much.

Mr Mallon: I guess there was no question there, eh?

Mr O'Toole: The question is —

The Chair: No, there is no question. Thank you, Mr O'Toole. Thank you both for appearing before us here today. We appreciate it.

SERVICE EMPLOYEES INTERNATIONAL UNION, REGIONAL OFFICE

The Chair: That leads us now to the Service Employees International Union, regional office. Good morning.

Mr Jack Drewes: Just a brief introduction. My name is Jack Drewes, and I'm the president of Local 268 here in Thunder Bay. I'm also the president of the joint council of the Ontario council of Service Employees Union, representing approximately 53,000 workers in Ontario. Sitting to my left is Glen Oram, who is a representative for Service Employees International Union, Local 268. I will also have copies later on this afternoon. I'll submit 30 copies, at union expense, of course.

The following submission is made on behalf of Service Employees International Union, SEIU. Our organization represents some 53,000 employees in Ontario who are employed at nursing homes, homes for the aged, building services and community services agencies. This includes approximately 27,300 service workers employed at 92 hospitals throughout the province. SEIU is gravely concerned with the damaging effects Bill 49 will have upon all of our abovementioned members whereby minimum standards will become an extremely difficult task to achieve.

Coupled with the above, SEIU anticipates further deterioration of our workers' rights, as Bill 49 will create conditions where the employer's temptation to violate a worker's rights will be an attractive course of action on account of the worker's predicament will likely be dismissed due to the introduction of a cap on claims and the minimal time limit one has to claim.

These and other amendments to the Employment Standards Act are found in Bill 49, which was introduced last May 13 by the Ontario Minister of Labour, Mrs Elizabeth Witmer. Mrs Witmer claims she refined the Employment Standards Act with minimal changes that may be referred to as "simple housecleaning." This simple housecleaning was described by the minister as "facilitating administration and enforcement by reducing ambiguity, encourage compliance and simplify definitions and administration."

Upon subsequent review, SEIU finds Mrs Witmer's simple housecleaning hardly as such. The truth of the matter is that what Mrs Witmer considers as minor technical amendments are in fact extensive changes that will have detrimental effects upon all vulnerable workers

throughout the province of Ontario, including our organized members.

1020

SEIU regards these changes as bringing more benefits to the employer while stripping workers of their existing minimal rates. SEIU questions the objective behind the government's amendments to the Employment Standards Act that are outlined in Bill 49. Is it not the intent of the Employment Standards Act to provide the workers with a minimum standard by which workers could define their rights in the workplace? Were not the existing provisions of the Employment Standards Act regarded by employees and employers alike as a minimal floor whereby anything inferior was not only illegal but downright shameful?

Bill 49 clearly reveals the government's lack of responsibility to provide protection for Ontario workers. It is an appalling gesture towards the same citizens that put this government in power. SEIU proposes that, in an attempt to secure the rights of all vulnerable workers, these so-called minor technical amendments be seriously reconsidered and structured in such a way that the legislation will govern employees and employers fairly in comparison to one another.

If Bill 49 is passed, these changes to the Employment Standards Act will see further unrest in the province of Ontario. SEIU anticipates that this legislation will fuel a fury among a vast group of vulnerable workers throughout the province. This group includes women, visible minorities, health care workers, foodservice workers, cleaners and homeworkers. Most SEIU workers fall into one or more of these listed categories.

SEIU wishes to first discuss our opposition to the fundamental change to the Ontario labour law by permitting the workplace parties to contract out important minimum standards. This is found in section 3 of the bill and subsection 4(2) of the act. Prior to Bill 49, it was illegal for a collective agreement to contain any provisions that were inferior to the minimum standards found in the Employment Standards Act. In contrast, Bill 49 permits a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay, providing that the contract "confers greater rights...when those matters are assessed together." In other words, what were always considered basic standards will now be negotiable. The union feels quite strongly that not only will an assessed package be cumbersome to negotiate but also forecasts that this procedure will fuel unrest among workers within the same bargaining unit.

Mrs Witmer asserts that this new flexibility to negotiate basic standards will benefit both parties when in fact the flexibility will create conditions to benefit employers only and disgrace employees, as minimum standards will become a thing of the past for our members in Ontario.

SEIU opposition to Bill 49 is further accentuated when considering that our health care workers are not in a position to strike. If perchance disputes arise between the bargaining unit and the employer during negotiations of the renewal of a collective agreement, the parties may only resort to interest arbitration in an attempt to settle any disagreements. The union foresees enormous conflicts arising between the two parties and subsequent injustice

directed at our members during negotiations. Undoubtedly, in these instances the parties will proceed to interest arbitration in an attempt to resolve the contending issues. To our knowledge, Bill 49 does not provide any standard which arbitrators may follow as a measure in assessing an equivalent if not superior package to what is provided in the Employment Standards Act. Thus, our members are at the mercy of an arbitrator's own assessment of a comparable or better package.

In addition to the above, one must keep in mind Bill 26, which was introduced by the current Tory government in the fall of 1995. Included in Bill 26 is schedule Q, Savings and Restructuring Act. Schedule Q stipulates criteria that arbitrators must take into account and consider prior to issuing an interest arbitration award. These criteria are largely concerned with the employer's ability to pay. Thus, Bill 26 combined with Bill 49 represents a double injustice not only to the organized workers but to workers in general. Obviously, the Harris government is hardly attempting to suppress their aversion towards the most vulnerable workers in the province of Ontario.

Clearly the union's concern with the possible breakdown and eventual deterioration of the interest arbitration process should be recognized and afforded considerable weight by this government before passing Bill 49. Bill 49 provides an opportunity for arbitrators to fashion an interest arbitration award that is inferior to the already minimal Employment Standards Act. This enormous shift in arbitration procedure, issuing awards without any minimum standards, defeats the purpose of interest arbitration. Interest arbitration is a substitute for strike and lockouts in the health care sector and is not meant to benefit either of the parties in dispute. Thus, not only is Bill 49 a measure to erase the historic concept of an overall minimum standard of workplace rights, but it also poses a significant threat upon the terms and conditions governing unionized workers.

With Bill 49, an employer may disregard this previous floor of rights and will have the opportunity to attempt to trade off such provisions as overtime pay, public holidays, vacation pay and severance pay in exchange for increased hours of work. How an arbitrator, or anyone for that matter, is to measure whether or not a tradeoff of this kind confers greater rights is left unstated. It will become an issue in its own right. Essentially, issues which have been granted by the legislation as a matter of right will become part of negotiations.

For example, suppose a bargaining unit employed at a nursing home is negotiating the renewal of their collective agreement with the employer. The parties are unable to reach an agreement and proceed to interest arbitration. The employer proposes a wage freeze and a reduction in paid holidays from 12 to six. In this scenario the employer is proposing a package that discriminates against workers just so they may maintain their current wages. The games that employers will now be able to legitimately play and get away with at the expense of their own employees is staggering. SEIU anticipates severe deterioration in relationships between employee and employer and ultimate breakdown of labour relations if Bill 49 becomes legislation.

In short, the parties are being asked to value and compare non-monetary rights, such as hours of work, with purely monetary rights, such as overtime and severance, and mixed rights, such as vacation pay and public holidays. Given the inequality of power between employers and employees, including many who are unionized, circumstances where detrimental tradeoffs are agreed to, despite the measurement problems referred to, can easily be envisioned.

This proposed amendment, therefore, will allow employers to put more issues on the bargaining table which were formerly part of the floor of legislated rights. It will make settlements more difficult, particularly for newly organized units. It will also enable employers to roll back long-established, fundamental entitlements such as hours of work, the minimum two weeks of vacation, severance pay and stat holidays by comparing these takeaways to other unrelated benefits which together can be argued to exceed the minimum standards.

The potential of this amendment alone to erode people's standard of living should be enough to make the drafters of the amendments rethink, if not radically alter, Bill 49. It is certainly enough to make Service Employees International Union stand in opposition to the bill as a whole.

Viewed another way, if a central goal of the industrial relations system has been to facilitate negotiated settlements, this bill runs counter to such an end. As mentioned, these changes will certainly establish greater difficulty in rendering settlements and will likely result in more acrimonious relations and industrial conflict. What were in the past minimum benefits protected by all will now become permissible subjects for bargaining, arbitration and labour disputes. Further, if significant erosion in minimum entitlements becomes widespread in the many bargaining units where employees do not have sufficient bargaining strength to resist employer demands, it will indirectly impact on the standard of living and working conditions of all citizens of Ontario.

The shortsighted may regard this rush to the bottom as helping employers to become competitive, but the more sound mind will definitely question how these changes will establish higher productivity, better workplace relations, increased consumer purchasing or an improved quality of life in what is currently Canada's most industrial and populous province.

Under the existing Employment Standards Act, unionized employees have access to the considerable investigative and enforcement powers of the Ministry of Labour. The inexpensive and relatively expeditious method of proceedings has proved useful, particularly in situations of workplace closures and with issues such as severance and termination pay.

The Bill 49 changes eliminate recourse by unionized employees to this avenue, and instead require all unionized workers to use the grievance procedure under the collective agreement to enforce their legal rights. In other words, our members will have to pay, through arbitration, for something that is a right. The unions will bear the burden of investigation, enforcement and their accompanying costs, which under the current act might instead be pursued before the Ministry of Labour. The director

can make an exception and allow a complaint under the act where he thinks it appropriate, but for all practical purposes the enforcement of public legislation has been privatized.

Should these amendments pass, the collective agreement will have the Employment Standards Act virtually deemed to be included in it. A union will also face the potential of claims against it by dissatisfied members. Although the existing duty of fair representation has not in the past been seen as requiring a trade union to represent employees in respect to employment standards, with this amendment change a union can be faced with complaints concerning fair representation by members. This could well mean that a failure of enforcement will be seen by the Labour Relations Board as constituting a breach of the duty of fair representation. Thus, unions will face both additional obligations and additional liability costs.

Arbitrators will now have jurisdiction and make rulings that were formerly in the purview of the employment standards officer, a referee or an adjudicator. They will not be limited by the maximum or minimum amounts of the act. However, arbitrators lack the investigative capability of the ESOs and may not be able to match the consistency of result that the act has had under public enforcement. Most important, employers could argue that as boards of arbitration do not have the critical powers to investigate whether particular activities or schemes were intended to defeat the extent and purposes of the act and its regulations, such cannot be determined. In such circumstances unionized employees could well be left with no recourse whatsoever. This is particularly evident in cases of related employer or successorship provisions of the act. It is difficult to see how such provisions can be applied when the successor or related employer may not be party to the arbitration proceeding.

1030

The amendments introduced in section 21 of the bill, subsection 65(1) of the act, set a new statutory maximum amount that an employee may recover by filing a complaint under the act. This maximum of \$10,000 would appear to apply to amounts owing of back wages and other moneys such as vacation, severance and termination pay. There are only a few exceptions, such as for orders awarding wages in respect of violations of the pregnancy and parental leave provisions and unlawful reprisals under the act.

The problem with implementing such a cap is that workers are often owed more than \$10,000, even in the most poorly paid sectors of the workforce such as health care workers and foodservices workers. Indeed, workers who have been deprived of wages for a lengthy period of time are the very employees who will not have the means to hire a lawyer and wait the several years it will take for their case to be settled. In effect, therefore, this provision will encourage the worst employers to violate the most basic standards, while at the same time compounding the problems for those workers with meagre resources.

In addition, Bill 49 affords the minister the right to set out a minimum amount for a claim through regulation. Workers who make a claim below the minimum — which is as yet unknown — will be denied the right to file a

complaint or have an investigation. Dependent upon the amount of this minimum, it could well have the effect of employers keeping their violations under the minimum in any six-month period and thereby avoiding any legal penalty.

In section 28 of the bill, new section 73 of the act, the proposed amendments intend to privatize the collection function of the Ministry of Labour's employment practices branch. This is an important change providing one of the first looks at the government's actual privatization of a task which has traditionally been public. Private operations will, should these proposals be implemented, have the power to collect amounts owing under the act.

A fundamental problem with regard to the act has, for some time now, been the failure to enforce standards. This is no less true with regard to collections. The most frequent reason for the ministry's failure to collect wages assessed against employers has been the employer's refusal to pay. The answer to this problem, according to the proposed amendments, is not to start enforcing the act but rather to absolve the government of the responsibility to enforce the act by farming out the problem to a collection agency.

In addition, the employment standards director can authorize the private collector to charge a fee from persons who owe money. Should the amount of money collected be less than the amount owing to the employee or employees, the regulations will enable the apportioning of the amount among the collector, the employee or employees and the government. Where the settlement is under 75% of the amount owing, the collector is required to obtain the approval of the director. But this still allows the collector incredible leeway, if not outright abuse, with someone else's money.

The danger here is that even persons whose earnings put them below the poverty line and who are owed money under the act could well be required to pay fees to the collector. A minimum wage worker at \$6.85 per hour, for example, could not only receive less money than what is owed, but also have to pay for it to be collected. Surely this raises ethical questions for the drafters. We would suggest that while such an approach may be appropriate in commercial transactions, it is neither morally justified nor appropriate in these circumstances. We want the system of public enforcement to be maintained and improved.

This provision will likely lead to employees receiving considerably smaller settlements. As well, it opens the door to unconscionable abuse. SEIU is gravely concerned that vulnerable employees will be pressured to agree to settlements of less than the full amount owing as collectors argue, if only for reasons of expediency, that less is better than nothing.

The Chair: Excuse me, Mr Drewes. You are well over the time now. Could you jump to your conclusion, please.

Mr Drewes: Okay. In conclusion, SEIU finds that, once again, the Harris government is victimizing Ontario's most vulnerable citizens in an attempt to cater to the wealthy. The Ministry of Labour will be downsized and rid of its current public services, thus, according to sources, approximately \$10 million will be salvaged from the Ontario budget that will, in turn, be issued as the tax

break that benefits the wealthy. The increased demands on trade unions proposed by Bill 49 are coming at the same time that the labour relations in this province have taken on a decidedly anti-union tone with the challenges posed by Bill 7 in terms of acquiring and maintaining bargaining rights and with the limits on unions' powers to bargain effectively through the combination of bargaining units.

In an attempt to avoid further unrest and conflict for a large majority of Ontario citizens, we encourage that Bill 49 be reconsidered and structured in such a manner that the legislation will achieve a fair balance between employees, unions and employers.

The Chair: Thank you very much. We appreciate your taking the time to come and appear before us here today.

KINNA-AWEYA LEGAL CLINIC

The Chair: That leads us to the next presentation, from the Kinna-aweya Legal Clinic. Good morning. Just a reminder that we have 15 minutes, and it's up to you to allocate as you see fit, between either presentation time or questions and answers.

Ms Mary Veltri: Thank you. My name is Mary Veltri. I am one of the staff lawyers at Kinna-aweya Legal Clinic. I thank you for the opportunity to make this presentation to the standing committee.

The legal clinic is funded by the Ontario legal aid plan and we have four offices throughout the district of Thunder Bay. We serve approximately 2,000 people each year by giving them summary advice, and among those people are individuals who have been aggrieved under the Employment Standards Act. We also provide legal education and law reform activity.

The primary focus in our submission to the committee will be responding to the issue of what the impact will be on non-unionized workers. There is no doubt that the changes the government is proposing will leave employees more vulnerable to exploitation by their employers and restrict their ability to obtain redress, so we don't think this is an improvement, by any stretch of the imagination.

The government claims that the changes they are proposing will encourage the workplace parties to be more self-reliant in resolving disputes and make the act more relevant to the needs of today's workplace. In fact, what the government is doing is shifting responsibility for enforcing basic labour standards and the cost for doing so on to individual employees. When the government talks about the need for having greater flexibility, what it's really saying is that it wants to help businesses procure cheaper labour by making it easier for them to violate employment standards.

I think it is shocking that I am here today to try to convince you of the need for employment standards. This has been something that we in Ontario have come to take for granted, and the importance of minimum standards cannot be overstated. Even in the face of legislated minimum standards, tens of thousands of workers must make claims against their employers each year in Ontario. This is clearly a problem. Employers do violate the law. Tens of thousands more have claims that they don't pursue because they are afraid of being fired.

Ninety per cent of claims made through the employment standards office of the Ministry of Labour are made by employees who have left their jobs. The reality of the workplace is that non-unionized workers whose employers are not meeting the legislated minimum standards do not complain until they find another job. We have frequent contact from employees who have not been paid in accordance with these standards. In the past, the local office has been able to assist these individuals in pursuing their claims for back wages. In 1994-95, over \$64 million was assessed against Ontario employers who failed to meet the minimum standards.

Legislated minimum standards provide a level playing field for employers, while ensuring employees basic minimum standards. The erosion of standards and weaker enforcement provisions will lead employers to compete on the basis of lowering wages and deteriorating job conditions. The labour market is already resulting in a growing number of jobs which are temporary, casual, part-time, poorly paid and insecure. This will lead to an unhealthy workforce. It will not lead to a healthy society or a productive economy.

The changes that have been proposed under the guise of housekeeping lead us to the conclusion that the more substantive changes that the government has indicated will follow will only further erode the already low and weak standards provided to vulnerable workers. We strongly protest this direction taken by the government, which seems to have no understanding of its role as public guardian.

Another comment that has been made is that this bill will "cut through years of accumulated red tape." What does the minister mean? She means that she is making it more difficult for employees to make claims against employers. She is reducing the period of time within which employees can make a claim and the length of time for which they can claim. She is forcing unionized employees to bargain for minimum standards.

It does not involve any more red tape to investigate a claim for two years or a claim for six months. It doesn't take more red tape to investigate a claim for \$20,000 as opposed to a claim for \$10,000. When the minister says she is abolishing red tape, what she really means is that she is making it much easier for employers to avoid their legal obligations. We continue to hear today how businesses don't want to have to deal with government forms. Unfortunately, we're talking about substantive claims for wages that people have worked for. This is not bureaucracy. This is not red tape. These are basic human rights. 1040

I'd like to address briefly the negotiation of minimum standards. I understand this is going to be in the second stage. However, there is no doubt that if unions are forced to negotiate minimum standards and accept packages that include standards that are lower than the current minimums, employers are going to expect the same flexibility from non-union employees.

Reductions in the staff at the employment standards office already make it difficult for employees to know their entitlements under the law. Many exploited workers are young, do not speak English or are vulnerable in other ways. The Ministry of Labour has suggested that it

is going to extend the provision of allowing negotiation of a flexible package of standards to non-union employees. It should be obvious that the result of that would be the effective abolition of minimum standards.

The minister talks about encouraging workplace parties to be more self-reliant in resolving disputes. This implies that there is an equality of bargaining power between employers and non-union workers. We who work on the front lines and hear the stories of unscrupulous employers exploiting vulnerable workers know better. We urge the committee to recommend that the act remain clear that minimum standards are inviolate.

The minister claims that changing the limitation periods in the act will provide prompter, more effective enforcement. It is difficult to see how this could be true. Changing the limitation period simply means that employers will be able to avoid paying employees significant amounts of money.

It used to be that a worker in a minimum-wage job whose rights were being violated could find another job and make a claim against the employer. This isn't the case now. Minimum wage jobs are hard to come by and workers will endure considerable suffering and exploitation in order to keep a job. We know that 90% of workers who make claims wait until they're no longer employed. Workers in many cases will be forced to choose between making a claim and keeping their job, and they will choose the job. The reduction in the time period for which an employee can make a claim amounts to a licence to employers to exploit their workers.

Employers are required to keep payroll and employment records for several years. It does not take more paperwork or red tape to investigate two years back instead of six months for employers who aren't complying with their obligations. Regardless of the period of time for which a claim may be made, employees always have the onus to establish their claim. It's up to them to provide evidence that they are owed wages, so it doesn't matter whether this is for a period of six months or two years. The investigative and adjudicative processes of the ministry provide a fair method for determining questions of credibility and assessing evidence.

The only alternative under Bill 49 to abandoning any claim for unpaid wages in excess of six months will be for an aggrieved worker to pursue a claim in court. Most people who make minimum wage can't afford lawyers and legal aid does not cover employment-related disputes. Even if aggrieved workers were able to pursue their claims in court, this would hardly be more cost-effective. Courts are continually being overburdened and it is a very costly way to resolve these disputes. In any event, then it becomes the public who has to bear the costs of these disputes. The inevitable result will be that employees will be denied justice and unscrupulous employers will benefit.

With respect to the limit on the amount employees can claim, the bill further limits the amount an employee can claim to \$10,000. It is impossible to see how this restriction can be characterized as helping the most vulnerable workers. This is an arbitrary limit; there is absolutely no rationale. Many claims that have been made to the ministry in the past have been in excess of that amount

by vulnerable workers, such as domestic workers. Each year, employers are found to owe millions of dollars to employees because of violations under the act. What possible public policy goal could be met by restricting the amounts that can be claimed by employees?

If an employee has a claim in excess of \$10,000, again she or he must choose between proceeding in court or giving up the claim in excess of \$10,000. As stated above, it's unlikely that they're going to be able to go to court and there will be no choice involved. Workers will be forced to abandon the claim in excess of \$10,000 in order to get any help. Again, who benefits? The employer who has chosen not to pay their employee.

Since the minister is claiming that the changes she is proposing will save public money, she must be expecting that employees will forgo substantial parts of their claims in order to get help through the ministry, and that I find unconscionable.

I'd like to address the enforcement recommendations that it be private collection agencies which are now in charge of enforcement. The bill proposes that once investigations have been done, collection of the amounts due to employees will be done by these private collection agencies. Quite admittedly, the government ministry has not been overly effective in collecting these amounts in the past, but there has been no study done to show that private collection agencies will be able to do a better job. We heard one gentleman earlier say that they were getting 10 cents on the dollar.

Passing the responsibility to private collection agencies will also introduce a profit motive, and we find it offensive that private agencies would profit from the exploitation of workers.

Bill 49 also allows private collectors to agree to a compromise or settlement with the employer who owes the money if the employee is in agreement with this settlement. Inasmuch as the private collection agency is mostly interested in recovering its fees and its disbursements, there will be a motive for the collection agent to settle with the employer for less money than is owed to the employee. The likely result of using private collection agencies will be increased pressure on employees to settle for less than what is owed to them under the law. Privatizing the collections function will do nothing to help employees who are owed wages.

I have a series of recommendations which I think would improve the existing legislation, if that is truly your intent.

The first one is that the focus of the ministry should shift to the prevention of violations. The resources of the employment standards branch should be increased. I don't think it would help to eliminate 49 positions when you're trying to improve the legislation. This would enable routine inspections to be done and audits performed when complaints are made.

Second, the ministry should be allowed to accept third-party complaints of violations of the Employment Standards Act. This would avoid reprisals against employees who seek to enforce their rights and such complaints could be investigated by conducting audits of the employer's records.

Third, there should be no exemptions from the employment standards legislation. Currently, the act discriminates against certain categories of employees. For example, there's a lower minimum wage for students. There's a different overtime pay system for domestic workers. Workers should be entitled to the same employment rights regardless of their age or where they work.

Fourth, the time limits for investigations must be shortened. We should not be able to read newspaper reports of employers who are deliberately flouting the law by forcing restaurant workers to work for tips only, with no investigation by the ministry in sight.

Fifth, the Ministry of Labour should routinely exercise the right under the act to file certificates of the order issued against the employer in court. This would provide a variety of effective methods for enforcing orders against debtors, such as seizure and sale of their properties or garnishment of their bank accounts. This would greatly improve the collection of assessments made under the act for unpaid wages.

Sixth, there should be aggressive prosecution of employers who violate the legislation. There is currently little to deter an employer at this point, when the worst that happens is that they are ordered to pay money that they should have paid months or years earlier.

Seventh, the current penalty levied against an employer who violates the law, which is the greater of 10% of the amount assessed or \$100, is not a sufficient deterrent. Employers who violate the law should be required to pay the administrative costs of recovering the moneys owed to their employees.

Finally, we strongly recommend that the government recognize that the provision and enforcement of basic employment standards is something that the majority of Ontarians want, and it is a foundation of a decent and democratic society. Thank you.

The Chair: Thank you, Ms Veltri. I didn't want to cut you off. We've gone over the 15 minutes again. There won't be time for questions, but thank you very much for a very detailed presentation.

1050

TRANSPORTATION AND COMMUNICATIONS INTERNATIONAL UNION, ALLIED SERVICES AND GRAIN DIVISION

The Chair: Our next group up is the Transportation and Communications International Union, Lodge 650. Good morning. Just a reminder again: We have 15 minutes, and it's up to you to decide whether you want to spend that time on presentation or question-and-answer period.

Mr Mike Poleck: My name is Mike Poleck. I am here to state some observations our union has on the Employment Standards Act changes. The allied services and grain division of the Transportation and Communications Union represents over 1,000 members working in and around the Thunder Bay region employed in transportation and processing industries. The union thanks the standing committee for the opportunity to present our views on the proposed changes to the Employment Standards Act. The brief will focus on the union's

experience in dealing with employers and a vision dealing with the philosophy and the purpose of providing minimum working standards for working men and women of all ages.

On August 20, 1996, we received a notice confirming that our organization was scheduled to appear before this committee. The notice stated, "Bill 49, An Act to improve the Employment Standards Act." In our view, the proposed changes have a different purpose, which is to destroy the fundamental protection provided under the act and severely erode the standard of living for those working people who are reliant on the act to provide and maintain minimum standards, and I would emphasize minimum standards. If changes are going to be made to the Employment Standards Act, there should be amendments which strengthen minimum standards and strengthen the enforcement of the act. Without the enforcement, the act means nothing. As a union, our problems have come, in a lot of cases, with the enforcement of the act itself.

Not only does our organization deal with unionized employees, but we also receive calls throughout the year from the public inquiring what recourse is available to deal with the actions of unscrupulous employers who fail to pay minimum wages, overtime, holidays, vacation pay or who illegally deduct money or expose workers to unsafe working conditions. What is the real answer to the concerns of these workers, who may be a son, a daughter or an older worker displaced from the grain industry and working for minimum wage in a non-union workplace?

Just last week, an inquiry was made to the ministry on behalf of an employee who has 15 years of service with the same employer. This employer pays above the minimum wage but does not provide benefits and provides the minimum vacation, holiday, overtime and maternity benefits as required by law. The answer was, "Yes, the employer would be violating the law by refusing to pay for the September statutory holiday, but you may want to consider not filing a complaint, because the employer could fire you."

This answer should not shock the committee. This is the harsh reality of the real world. Don't think for one minute that the unionized sector is immune from similar action by employers, an example being the multinational company Archer Daniels Midland, which just permanently closed the Ogilvie starch and gluten plant, which was operational in Thunder Bay for the past 92 years. This plant always made a profit for its Canadian owners but couldn't seem to provide a large enough return to the US shareholders after the 1992 takeover. This company is notorious for attacking workers' rights and standards of living. The favourite line utilized by ADM during what was supposed to be negotiations between the parties was, "The company is prepared to provide whatever minimum the law requires, and if the law is silent on the issue, then you will get nothing." The word "negotiation" was not in the vocabulary of ADM. They simply presented a company contract straight out of the Dark Ages, and that was their final position.

Yet the proposed changes to the Employment Standards Act would subject us to the mercy of the employer. If the law didn't require a minimum or if the law pro-

vides an opportunity to negotiate the abolishment of lower standards, the workers would have no choice but to accept them or have the company lock out or permanently close the facility, as we have seen in the above example.

Recently the union negotiated a contract with a small employer with 35 employees, mostly women. Starting rates, holidays, vacations and other minimums were tied directly to the Employment Standards Act. During the negotiations, the government announced its intent to change the act. Well, the lawyer for the company was licking his chops. The union was unable to maintain the current standards set out in the act, should they be eliminated or changed. The employer forced the workers, with an average wage of \$10 per hour, many who were single parents, to accept the final offer or face the consequences of a lockout. And that wasn't the end. If the Employment Standards Act changes, those people will be faced with a different collective agreement than they negotiated at the table.

The horror stories go on and on. Society should have minimum enforceable standards. Asking the union to litigate claims against employers at arbitration is government downloading of enforcement costs. The government should be striving to beef up and streamline enforcement, not defer it to a more costly and complicated system of litigation.

Society should ensure that standards respect the dignity of a worker and ensure at least a sustainable standard of living. The present standards do not meet this goal, and the proposed changes are nothing more than an attack on those with little or no way to fight back.

If an employer is violating the law, what choice do you have in a tough job market? None. Quit a job due to violation of labour standards, safety and health concerns or harassment, and how do you propose people will sustain themselves or their families?

In closing, the reality is that it's a tough world out there and Bill 49 will only make it tougher. Thank you. That's the extent of the written presentation.

The Chair: Thank you very much. That leaves us a fair bit of time for questioning, just over two minutes for each caucus. We'll commence this round with the third party.

Mr Martin: Thank you very much for coming before us this morning and so adequately spelling out the impact of this legislation or any deterioration of employment standards or, as others have said, the lowering of the floor of rights or the rush to the bottom concerning employment standards. Worker representatives before you have made the same point. The impact this will have on workers should be becoming perfectly clear to everybody here. Representatives from the legal clinic community have spoken about the impact it will have on non-unionized workers and raised questions about who will represent them.

So my question for you is, considering the fact that this legislation is not solely targeted at organized labour but at workers, every form of worker across the province, and that probably close to three quarters of those workers are not represented by any organized labour organization, who will represent them and how will they speak up for

themselves and fight for their rights and defend themselves in the face of this onslaught?

Mr Poleck: That's what we're trying to present: that there is nobody. It goes back to the ages before we had WCB, where somebody who was in a position to fight the system who could afford lawyers and get into a complicated situation might win a large claim, but that was to the detriment of the many people who had small claims who couldn't afford to hire a lawyer or didn't have access to a lobbying body to represent them. In this day and age — well, this committee itself is an example. You have to know the system and you have to have contacts in order to make your case known. A small individual would lose that access to hear his case. Our feeling is that in most cases they would go unheard, that they would not be answered or addressed.

Mr Martin: It's my strong feeling that the government in this instance is backing away from a role we've traditionally come to expect it to play, particularly where it affects workers in small, isolated communities like northern Ontario, where you don't even have legal clinics, never mind the representation of some of the larger organizations in bigger centres. When you think of small communities in northern Ontario, what's the impact you see there, and what recourse do they have?

Mr Poleck: In effect, the same answer: They won't have the access, and they won't be heard; they'll just be sloughed off. That is our fear, and that's what we feel the government has a responsibility to ensure: that all workers in the province are heard and have access. Bill 49 will not provide it.

Mr O'Toole: Thank you very much for your presentation this morning. We have heard the complaints on pretty much the same basis. I just want to draw to your attention that in your conclusion you say, "The present standards do not meet this goal, and proposed changes...." Listening to the overall tone here, you don't think the present act works very well either.

Mr Poleck: Our feeling is that anything can be improved. What we're looking for, as has been mentioned in past presentations, is the enforcement and living up to the standards that are there. What we've seen in a lot of cases is that employers will try to dodge the standards that are there now.

Mr O'Toole: I really believe that the minister is clearly trying to get to the most vulnerable, I sincerely believe that, by shortening the claim period, by lengthening the appeal period and other small changes. If you look at them on balance, it's getting every opportunity to get an agreement as early as possible for the employee who has been wronged. I fundamentally think if you read it without the rose-coloured glasses on, you'll see that that's what these changes are, because most of the claims, 90% of the claims now are within six months. That's the standard in most provinces. The average settlement claim isn't \$10,000; the average settlement is \$2,000. In most cases 4% of the claims are over \$10,000. We're really focusing the resources, in a time where we've been spent into huge debt by the previous government, on the most vulnerable workers. Many unions that have approached us are well researched, well resourced and quite capable, in their collective agreements, to defend the rights of their particular workplace. Not allowing them to negotiate

overall anything less than the employment standards — I don't think responsible union leadership would negotiate anything less.

1100

There is some responsibility today, and I don't think the government has the resources to fight international unions in both the Employment Standards Act and under the Ontario Labour Relations Act and in the lawsuits that entangle for well-researched and well-resourced companies. The individual is whom we're trying to protect, the small domestic worker, the person who doesn't have the resources — and most of the claims are well under \$10,000 — to get their money as expeditiously as possible. I for one want that justice for the small person, most importantly.

Mr Jean-Marc Lalonde (Prescott and Russell): Thank you for coming up with this brief. I'd just like to ask you a question. In the last paragraph of page 1 you said: "I would emphasize minimum standards. If changes are going to be made to the ESA there should be amendments which strengthen minimum standards." Do you feel, instead of coming up with amendments, if the government would first enforce what is in place at the moment instead of letting off 45 enforcement officers, that if those people had been properly trained they would make sure that the ESA was properly enforced?

Mr Poleck: In response to your comment and Mr O'Toole's, if the government enforced the act in a timely and proper fashion, unions wouldn't be taking these cases to litigation and there wouldn't be the time and expense that he mentioned in terms of unionized groups fighting — getting employees what they were entitled to under the ESA.

In terms of people who aren't organized, if a person doesn't have the resources to mount a campaign, shortening the appeal time limits are not going to give him any help at all; they're going to make it harder for him, because if he doesn't have the resources in the first place, shortening the period that he can file and make his claim is not going to help him out at all. In terms of unions, unions are not rich, as it would seem to be implied here in the comments. Unions are facing downsizing, loss of membership and many other problems. They are not the bottomless pit of money to fight these claims.

The government has a responsibility to the people of the province who work in the province to provide them a safe environment and, as I've said before, sustainable employment, a sustainable standard of living out of that employment. We feel they have an obligation to people to make sure that the conditions they work under are enforced.

The Chair: Thank you, Mr Poleck. We appreciate your coming before us here today.

CONSTRUCTION ASSOCIATION OF THUNDER BAY

The Chair: That takes us to the Construction Association of Thunder Bay. Good morning. We have 15 minutes, and you can divide that as you see fit between either presentation time or allowing for questions and answers.

Mr Murray MacLeay: Good morning. My name is Murray MacLeay. I'm with the Construction Association of Thunder Bay, which is a membership organization of people who are involved in the construction industry. Through that we employ roughly 3,600 tradesmen throughout northwestern Ontario.

The association believes that this review is a step in the right direction. We applaud the government's intent to focus its slimmed-down resources on the things it does best and allow workplace parties to take on things that they can do best.

When reviewing the act, it is important that you understand that construction is and will remain different. The exemptions in Ontario Reg 325 and Reg 327 regarding hours of work and termination are necessary and must be maintained. Weather conditions haven't changed in Ontario and construction jobs are, by definition, time-limited.

Our concern is that we would get a group with everyone else, and it's very important to us that you understand that the construction industry is different. The scenario that we would appreciate the most is flexibility where employers and employees could make their own arrangements on hours of work.

A collective agreement that covers both shop and site employees identically should be recognized in the act. There have been a number of decisions by employment standards officers that have ruled that a construction worker employed at a shop is not exempt from the sections of the Employment Standards Act even though he is working under the same collective agreement as all the other workers.

In short, we applaud the government's move to utilize scarce resources economically and efficiently, simplify a difficult act and facilitate productivity and recognize the ability of workplace parties to manage their own affairs. When stage two of this review comes along, which we believe will have more impact on the industry, we'd be more than happy to participate at that point. Those are my comments.

Mr Baird: Thank you very much for coming today and for your presentation. One issue that's come up right across the province, and I think it's been from people from a variety of backgrounds, is that right now we're only collecting, through the employment standards branch, about 25 cents on the dollar. That didn't change remarkably in the previous government. In 1993 they disbanded the collections branch at the employment standards division of the Ministry of Labour, discharged 10 employees, and it went down from 25% to about 15% or 20%. We're back up to 25% now.

As someone who is representing a good number of employers I'd love to hear your comments on this: One union actually brought up, which I thought was very much to their credit — notwithstanding the human rights aspects of their workers, which is obviously the top priority — second, that it wasn't fair that some employers accept their responsibilities and others flagrantly disregard them. Would your members and the folks you're here to represent today have a strong exception to or any disagreement with stringent measures to ensure compliance of orders that are issued under the Employment

Standards Act after an investigation, after the appeal period expires?

Mr MacLeay: No. As a matter of fact, in the collective agreements that we are a signatory to we have penalty clauses for employers who do not follow the collective agreement; therefore the members would have no problem following orders from the employment standards.

Mr Ted Chudleigh (Halton North): In the past week or so we've heard from a number of people about the bad bosses, the good bosses, and no one wants to defend bad bosses, of course. This morning there was some suggestion that education of employers and employees as to knowing what their rights are, knowing what their responsibilities are is a question as well. Could you comment on employers and how many of them know what is appropriate to do in given situations and how we might improve that educational process for employers, aiming at perhaps avoiding the development of the so-called bad boss?

Mr MacLeay: I guess my comment is somewhat biased, but people who are in business, whether it be construction or anything else, should belong to an employers' association of some sort. In most cases any government regs that come down or any changes to employment standards, to health and safety acts, anything like that are circulated to the membership through those organizations. They function very similarly to a union in the sense that the union educates their individual members by newsletters and distribution of the same material. We do the same thing. Unfortunately, not enough employers belong to their particular business association, and I say that because I run one of these associations and we have the same inquiries from non-members when they get into trouble. Then it's usually too late and obviously we tell them to seek legal advice. I think partially the associations are probably at fault in not advertising or seeking new members, but there certainly are a lot of employers out there who aren't aware of what they should be doing.

1110

Mr Lalonde: I'm glad to see that the construction industry, which is the heart of the economy, has some exclusion in the Employment Standards Act. Do you see the importance, or would you be in favour of the Employment Standards Act being posted at most construction sites, or is there a need for that?

Mr MacLeay: Certainly I wouldn't be opposed to its being posted anywhere. As far as at a construction site, if it's a union site, union agreements are far better standards than the Employment Standards Act.

Mr Lalonde: In the majority of times, though, the general foremen are not fully aware of employment standards and sometimes they don't follow them. It's not because they don't want to follow them; it's because they don't know about them. Knowing that in the construction industry there's very little time available for training, it would be left up to probably the 4% of employers who are — they're all good employers, but some of them are not as good as the others. We say that about 4% are not as good as the others. Then it will be important to have the Employment Standards Act posted at least at the construction offices.

Mr MacLeay: Certainly the membership that I represent wouldn't have any problem with that.

Mr Lalonde: Very good. Thank you.

Mr Martin: You've heard reference by the government this morning to this issue of good boss/bad boss and people coming to see this legislation as bad-boss legislation, a way to accommodate people out there who are less than responsible in the way they develop a workplace and protect workers and the interests of the community they serve.

It seems to me that whenever a bad operation goes wrong and somebody gets hurt or there's litigation over some issue or other, the whole industry suffers, the whole community suffers, including the worker. In northern Ontario, where we're so far apart and distances are so great and transportation is often a difficulty, we probably need more, not less, overseeing by government to make sure that everybody is living up to not only the standard but the principle of the standard. Do you have any comment?

Mr MacLeay: My comment on that would be, go back to the education issue. I don't think we need more legislation. We need to educate and enforce current legislation. Small business today is being smothered by government paperwork and requirements and it's just time to enforce current legislation. Everything we need is there but we're not enforcing it. When there's a problem we just seem to reinvent the wheel. Educate the employer now with the current stuff and I think you'll achieve your results.

Mr Martin: Would you accept, though, that an answer, any answer, would be to back away from current — you're suggesting to enforce the current legislation. This government is proposing that we get out of the current legislation, that we diminish the current legislation.

Mr MacLeay: Every piece of legislation should be reviewed on some sort of basis, and in this case, as I said earlier in my comments, we applaud the government in taking an initiative. I think you have to listen to the people who are coming before you. You have to make your conclusions when you're finished and do what you think is best. But I go back to the education of employers and employees on their rights as probably the primary thing that's missing through all of this legislation.

The Chair: Thank you, Mr MacLeay, for appearing before us here today and making your comments.

NEW DIRECTIONS WORKERS RESOURCE CENTRE

The Chair: Which takes us now to New Directions Workers Resource Centre. That's a different title than is found in your agenda, members, but the same presenter. Good morning. Please proceed. Just a reminder that we have 15 minutes to divide as you see fit.

Mr Stephen Jagoe: My name is Stephen Jagoe. I represent a board of 10 directors and I'm here today to do a presentation on basically what services we provide and how we feel the act is going to affect unemployed people and part-time workers.

New Directions Workers Resource Centre is a non-profit organization put in place to help displaced workers

by providing them with services and information to help them handle difficult situations, and ultimately to re-enter the workforce. I would like to add at this point that all of the services we do are free of charge.

A good portion of our clients are older workers. They themselves have been taken out of the workforce through no fault of their own, by means of downsizing, plant closures, restructuring and layoffs with no dates for recall. This leaves this group of people to look for low-end pay scale jobs or part-time work with no access to adjustment programs.

As a result of this pending legislation, many of the rights that workers have fought for and won will no longer be in place, resulting in fear and possibly more control on the side of the employers.

In the case of large companies versus large businesses, on the bottom on page 3 you will see that in the case of large employers who employ 50 or more workers and who are about to be let go, the Employment Standards Act requires employers to notify the Ministry of Labour. This information is passed on to the office of labour adjustment of the Ministry of Education and Training. Then government representatives make contact with the employer and a bargaining agent to work out a possible adjustment service for the displaced workers. The formation of this committee is totally optional. If a committee is struck or formed, support programs will be put in place. The employer obviously is the key to making this committee succeed. Employees who know their employer supports such a committee and its actions are more likely to become involved and access the services that the committee can supply. These programs are partially funded by the employer and the government.

In the case where small businesses are involved, this form of accessing does not meet the needs of these employees because usually they have less than 50 workers hired. They may not access any adjustment programs or support because these small employers may not know what is available to them.

An example was that a local employer had about 25 employees and was asked to participate in an adjustment program. This employer refused to participate because the company's controlling interests were from outside the province. The workers did not get the services they required as we dealt with them on an individual basis when they came into our office.

Another example of this is that a local restaurant was planning to close its doors to the public. This employer had about 15 employees who were all given four months' severance packages. There was a reluctance to participate in this program because it was felt their participation in this program would affect their severance package. It also became known that two part-time positions had become available and the successful candidates for these positions were not partakers in the program.

1120

The purpose of this act is to have in place acceptable workplace rules or standards which employees should not fall below. This proposed piece of legislation will remove this, and it's possible that enforcement of this legislation could be transferred to the unions where a workplace is organized by such a union. This is a big responsibility to place on the collective bargaining table.

In the case of small businesses, workers will most likely not be protected. What will happen to these people when their employers come to them and ask, "We want you to work some overtime, but we can't afford to pay you these overtime wages"? This puts these employees into a difficult position. Employees, out of fear, will succumb to their employer's wishes.

What's going to happen when an organization is looking at downsizing and has to make a cut in staff? Most employees are faced with a choice: "Do I take the package and leave or do I stay?" In the case of the employee who chooses to stay, there will be a fear that he or she will be moved out of that position and will have lost everything. The person who takes the package will most likely leave and then have to look for work elsewhere, provided there are jobs available.

When layoffs occur in a small business, the employee usually gets a layoff notice and some money which is allotted to them. With this new legislation it will become more difficult to collect these moneys, especially if a collection agency is brought in. Under the proposed legislation, these agencies will be able to take a percentage of the money owed as administrative costs. Thereby, these workers will not get their full awards, and once an employee accepts these, there is no recourse to seek the larger amounts.

My first recommendation is that all companies must participate in some sort of labour adjustment programs or at least have places or centres available to these older workers, and have access to programs by skilled people in the areas of job searching and retraining.

My second recommendation is that the government should be responsible to the workers of this province in making sure that all rights and privileges are respected and enforced with no outside interests, and this amended piece of legislation should be included with this package.

In conclusion, it appears this government has brought forth a proposed piece of legislation that is clearly flawed and not very well thought out. They felt that by removing themselves from the process of investigation and collecting of any moneys rewarded as a result of a settlement, they will in turn be saving the taxpayers thousands of dollars annually.

However, the question that needs to be asked is, who or what is really being saved? It is certainly not the workers of this province, who will now have to bear the full expense of filing a grievance through the court system or, for smaller amounts, will have to proceed through Small Claims Court. As has been pointed out, a lot of these workers are either part-time or older workers who cannot afford the high costs associated with filing such a claim. As a result, they will not pursue any action. Thus the money that is owed to them will not be collected and the employer will continue not to pay his or her employees what is rightfully theirs.

The Chair: First up for questioning this time will be the official opposition: two minutes.

Mr Duncan: Thank you very much for your presentation. To your specific recommendations, I find them fascinating, because you've dealt with a topic that I think we'll be talking about a lot more in chapter 2 of this saga; that is, the whole notion of employment standards in Ontario.

You talked about an issue that has been talked about in other jurisdictions, that whole notion of corporate responsibility and a changing nature of the entire employment standards relationship, if you will. I want to pursue this line of questioning with you.

There was a very good piece in the media this week that Japanese people are reluctant to go to work for North American companies because of their irresponsible attitude when it comes to laying people off in the name of profit. That is the whole argument that's starting to come forward around corporate responsibility and around profitable companies laying people off, what responsibilities they have not only to those individuals but to communities as well. In an era of free movement of capital across borders there are oftentimes great incentives to leave if a particular economy is less efficient, if government regulations are less efficient.

Do you think we should look at our whole concept of employment standards and severance and review it with respect to this notion, the idea that there's a greater obligation than simply one where you get X numbers of weeks of pay for X years of service with a minimum and maximum, that we ought to be looking more at a more holistic approach to corporate responsibility?

Mr Jagoe: I think anything that would deal with them along that line would be appreciated from the side of workers. If the workers have more involvement in a situation where they can at least say, "This is what we feel needs to be in place," I think they would be a lot better.

Mr Duncan: Can I just then ask you a supplementary. One of the things that troubles me as we go through this is that again I don't see much willingness on the part of some organized labour groups to even discuss changes. It's our view that we ought to be talking about them. Clearly the system's not working the way any of us wants it to and yet there seems to be this approach that, "Well, hey, you touch anything and it's bad." I guess I'm looking for organized labour and people such as yourself to say, "Hey, look, there's got to be a better way to do it."

Mr Jagoe: I think if there is the better way to do it, then maybe with these types of programs they can get at least access to some sort of assistance or even some sort of aid where they can approach the government and say: "I'm an older worker. Where can I go or what services are available to me?"

Mr Martin: I've got a couple of brief questions. One is, you raised the issue, and it's been raised before, of intimidation and the impact that has on the lives of workers and whether they take advantage of certain opportunities or not or whether they actually resist it when their rights have been taken away. Perhaps that might also give Mr Duncan some insight into why the labour groups at this point are so critical. It's this whole issue of intimidation and the atmosphere created by that. What's your experience re the question of intimidation of workers you work with?

Mr Jagoe: I brought up that if there's a program in place and if an employee wants to participate in the labour adjustment program, how is that going to affect him? Is it going to affect his severance package? Is it

going to affect any chances of rehiring? If an employee goes to a labour adjustment board or even adjustment services — “I’ve participated in this program; I’ve gone through these steps” — is that going to diminish that employee from being able to move on and do another job or is this going to be held against him because at least he’s aware of any situations that are out there? He’s going to be a little bit more knowledgeable, and sometimes knowledge can be a dangerous thing if you’re dealing with an employee-employer relationship.

Mr Martin: How in your read of it is this legislation going to be particularly difficult for those of us who work in northern Ontario, particularly in some of the smaller communities in northern Ontario?

Mr Jagoe: This is what we found when we were going through this, that there are no programs like labour or even adjustment services that we offer in the north. We found that if employees have access to these, they can at least make a little bit more better choices in how to apply or even file claims or even — what’s the word I want?

Mr Martin: I think you made the point there. Thanks very much.

Mr Shea: I appreciated your presentation and I want to offer you some hope. I think many of your concerns expressed on page 5 are indeed addressed to your satisfaction in the legislation. But you touched on a point that I think is extremely important when we get to the second phase, and I’d like your comments to flesh it out. You began to address it on page 5, your recommendations. It may have escaped others’ attention, but I’m concerned deeply about it and that is the whole issue of older workers and the displacement of older workers. These days, sadly, the word “older” sometimes is being pressed down in terms of age limits. Don’t let my silver hair mislead you. I’ll have concern about that four years from now, perhaps.

1130

I want to address this because I think it’s an extremely serious issue. Do you have any thoughts, as the global restructuring goes on, of how governments, not just this government but in fact the federal government, may begin to work in cooperation, define new and innovative ways of using the Canada pension plan, the UIC and a bunch of other things in a more creative fashion, not to cause older workers to be displaced because of their age but to find a way for them to exit gracefully and with some measure of support, to allow younger workers, new university graduates and others who right now have virtually no hope of going anywhere in this country or North America or elsewhere to begin to enter into the labour market, perhaps at lower wages but to begin to work their way up through the system? Have you any thoughts on how we might address that?

Mr Jagoe: Not at this time. I do not, sir.

Mr Shea: Would you think about that, and if you do, would you send in some information on that?

Mr Jagoe: Yes, I would, sir.

Mr Shea: Do I have time for another question or did I blow it?

The Chair: Very briefly, yes.

Mr Shea: In terms of education, is it your sense that right now workers and employers are reasonably well-

informed about the Employment Standards Act, or are you finding that there’s a great deal of misunderstanding?

Mr Jagoe: I’m finding that there is a great deal of misunderstanding, because a lot of these employees do not know it’s out there. So they can be brought up — at least they can close that gap.

Mr Shea: So these public hearings are very important, very helpful in that regard.

Mr Jagoe: Yes, they are.

The Chair: Thank you very much for coming before us here this morning and making your presentation.

THUNDER BAY COALITION AGAINST POVERTY

The Chair: Which leads us to the Thunder Bay Coalition Against Poverty. Good morning. Just a reminder that you have 15 minutes. Feel free to divide that as you see fit.

Ms Chris Mather: Thank you. My name is Chris Mather. I’m the coordinator of the coalition. Before I start, I’d like to introduce the people who are with me. On my far right is Barb Carignan, one of our dedicated volunteers. Next to me is Chris Scheibler, one of our food security workers. This is Beulah Besharah, the president of our board, and this is Doug Powell, the treasurer of our board.

We’re a non-profit community organization concerned about the depth and extent of poverty in our community. The majority of our members are people whose incomes fall below Statistics Canada poverty lines and most of them are on some form of social assistance.

It was really great to hear Mr O’Toole say he was concerned about the small people. That’s us, so you’re going to get the real skinny. One of our major activities is the operation of a food bank and we serve about 400 people a month at our food bank. One of Ms Scheibler’s jobs is to ask the people at the food bank for their opinions on current issues. That’s one of her primary roles, so it’s from those opinions that what we’re going to say — our presentation comes from poor people’s opinions. We want to make that clear.

We know that you’ve heard a lot from leaders of the organized labour movement about their dissatisfaction with Bill 49 and we want to say that we support their concerns. We believe the protection of the collective bargaining process is very, very important, but our expertise lies in another area. So today we intend to confine our remarks to the concerns of our members, most of whom are employed at part-time, casual or seasonal employment or make only minimum wage.

First of all, we’d like to talk about the idea of reducing the amount of time for claims from two years to six months. We have three points to make concerning this issue.

(1) The low-income community contains a high proportion of people with low literacy levels, people with psychiatric or developmental disabilities, recent immigrants and people for whom English is a second language. Such people are often unaware of their rights. They’re unable to understand literature which explains those rights, and it may well take such people much longer than six months to become aware that their

employer is in violation of employment standards. We don't think their disadvantages should be an excuse for an employer's liability to be limited. That's not fair.

When I first came to Canada, I worked for nine months as a waitress before I realized that my employer should be paying me for the hour I spent cleaning the restaurant after my shift. He told me it was standard practice for waitresses in Canada to do that for free. I believed him, and I speak English and I'm in no way developmentally delayed. It happens. It's real.

(2) Low-income people are under pressure as never before to keep a job if they do manage to find one. Social assistance and/or unemployment insurance has been denied or delayed to our members because they voluntarily left employment. Under such circumstances, people are likely to wait until they have a new job before they complain, and in Thunder Bay it can take a lot longer than six months to find a new job.

(3) The same point can be made concerning people who are fired. Assistance can be delayed or refused if you're dismissed from a job. Workers understand very well that their employer may fire them if they make a claim to the ministry. The tightening of assistance rules and the six-month time limit put together can result in the worker having to choose between his or her rights and his or her job.

We want also to talk about the maximum of \$10,000 that you're suggesting for a claim that can be made through the ministry, and also the idea of a minimum claim amount. We have four points to make concerning the limits.

(1) We have members of our coalition who have been owed more than \$10,000 by employers. That does happen. Setting a ceiling for claims could encourage unscrupulous employers to continue to violate standards once they owe an employer \$10,000. I mean, what harm is it going to do them to remain in violation and allow the bill to mount up? Why does this government think there should be a maximum amount claimable? We don't get it.

(2) Bill 49 specifies that any claims for more than \$10,000 should be pursued through the courts but that a worker can't file a claim with the ministry and initiate a civil suit. This amounts to no choice for a low-income person and it's economic discrimination. Lawyers charge large amounts of money, they want their money up front, especially when they can tell a client is poor and doesn't have any easily realizable, sizeable assets, and civil suits take a long time. This act therefore limits completely for most low-income people the amount they'll ever be able to recover from an employer.

(3) Setting a minimum claim amount would put many of our members at risk, and we're referring here specifically to people who depend on casual or seasonal employment. What's to stop an employer from calculating how many hours at minimum wage is just under the minimum claim amount and employing a series of people for that time and no longer? This isn't an illusory concern. Employers already take advantage of the unemployment situation. Recently one of our members applied for work at a travelling carnival. He's all excited, he gets hired. He and several of the men worked for two days

setting up rides. When he asked for his pay, he was told that he had not actually been hired yet and that he and the other men were working for free while the employer evaluated their work performance and decided who to hire permanently. So at least five men within the last two months worked for two days for nothing. It does happen.

Perhaps the most disturbing issue about a minimum claim amount is that with this measure, the government is legislating the principle that it's legitimate to defraud people as long as it's under a certain amount. Is that this government's understanding of the rule of law? How much is it legitimate to defraud an employee? Two days at minimum wage is about \$110. Is that a low enough amount? To put that in context, \$110 is approximately 56% of the maximum welfare allowance this government allows single people for food, clothing and transportation per month; \$110 is approximately 28% of the maximum allowance this government will pay to single parents with one child for food, clothing and transportation a month. We believe that if an employee is owed the equivalent of one hour's wages, those wages should be paid.

Mr Baird, where have you been? Twenty-five dollars is a lot of money. We give out \$8 worth of food to every adult who comes to our food bank. They line up around the block. Twenty-five dollars is about one week's amount of food that Mr Tsubouchi says a single adult should have. Would you give up one week's worth of food?

1140

Finally, Bill 49 specifies that private collection agencies would be responsible for collecting money owed to workers by employers. I want to address something that was said by one of the government members today, which is that the ministry hasn't been collecting the money. I administer four programs for our agency. If those programs aren't working, I talk to my staff. I get my board alongside me. We give our staff as much help as we can. We try and come up with creative ways of making those programs work. We don't call the children's aid society and say, "Hey, we can't do the job, so you do it." Passing the buck because your ministry isn't working is not responsible management, in my view.

(1) It's a fiction to assume that private collection agencies will operate in the best interests of the worker who's owed money. Collection agencies push for quick, low settlements. How much more likely is it that poor people will have to accept suggested lower settlements simply because they need money desperately?

(2) The act says that if the amount of money obtained by the collection agency is less than the amount owed to the employee, the money should be divided out between the collection agency, the worker and the Ministry of Labour. This seems to us to imply that a worker who is owed money could end up paying to have that money collected. Can the government members here today inform us if this is what's intended by the legislation? Can we have read this correctly? It's subsection 73.0.2(7), "Apportionment of money collected." We don't think we can have read this right, that a worker should have to pay to have his money collected.

(3) Bill 49 says the director must approve settlements which are less than 75% of what the worker is owed.

Under what circumstances will such settlements be approved? These are questions from the people at our food bank; I've put them in fancier language. Under what circumstances will such settlements be approved? How often will this happen? How rigorously must the director investigate the reasons for the reduction? Will a record be kept of how often a given collection agency negotiates such reductions? Will a record be kept of how often a given employer is allowed such a reduction?

(4) The spelling out of the principle in the legislation that workers can be asked to accept less than they are owed implies that unscrupulous employers can look forward to a de facto lowering of their penalty for violations.

(5) There's a potential for conflict of interest in using collection agencies for this purpose. Low-income people and collection agencies aren't real good friends, often. If an employer regularly uses a given collection agency to pursue its own bad debts and that same collection agency is then empowered to collect money from the employer on behalf of a worker, will that agency pursue the worker's claim vigorously? It seems to us much more likely that the agency will protect its own interests by looking after its more powerful regular customer and so soft-pedal the worker's claim.

(6) There seems to be the potential for another conflict-of-interest situation arising from the use of collection agencies. Suppose an agency has a regular valued client, and we'll call it the ABC department store, and the agency is empowered to collect money owed to a worker by a different company, say by a utility company. On checking its records, the agency realizes that the worker owes money to the ABC store. Does the act prohibit the agency from taking the store's money from the money collected for the worker? Would the agency be entitled to collect two sets of fees from the same money? Again, these are questions from our food bank. Does the act require agencies to declare either of the above two conflict situations prior to accepting the contract to collect the worker's money?

In summation, the Thunder Bay Coalition Against Poverty believes that Bill 49 represents a step back for workers in this province. Taken as a whole, its provisions favour employers over workers and weaken both employment standards and their enforcement. Some of the legislation's provisions will result in economic discrimination against low-income people. Thank you for your attention to our presentation.

The Chair: Thank you very much for your comments. That leaves us one minute per caucus for questioning. In this round, it will commence with the third party.

Mr Martin: I have to say, I'm totally convinced. You've made the argument, as have all the representatives of organized labour who have come before us this morning, and so did the person from the community legal clinic. I don't know why the government continues with this.

I would like to put a motion on the floor, Mr Chair, if I might, that as soon as possible, early this afternoon, this committee recommend to the government that they withdraw this bill and that they get on with creating the 750,000 jobs they promised they were going to create

during the election; that they get on with what this province, when they elected them, thought they were going to do, which is come up with an industrial strategy that creates work for people, and stop the continuous and unrelenting attack on vulnerable and poor people and working people in this province. I'd like to table that motion now.

The Chair: I guess we have two choices. We can either put the question right now or — Mr Martin has tabled it. It's taking up the time of this presentation. I don't know if that was your intention, Mr Martin, to use up their time.

Mr Martin: I just think it's silly for us to continue, given the arguments that are being made before us, and I believe not just here. This legislation is just not well-thought-out, not in the best interests of the wellbeing of the people of this province, so we should withdraw it. We should ask the government to withdraw it and get on with the business of creating work in this province for people.

The Chair: You've heard Mr Martin's motion. Any further comment? All those in favour? Contrary? The motion is defeated.

Moving on to the government benches, Mr Baird.

Mr Baird: Thank you very much for your presentation. In terms of your question with respect to the commission of a collection agent, that would of course be borne by the employer. For example, the average order is \$2,000. The commission is added right on to that order for the employer to pay.

One thing we do know, though, is that the previous NDP government disbanded the collections branch. There was a specific branch set up within the Ministry of Labour designed to get the money, but the NDP cut it to save money. They fired 10 people, discharged those employees and never replaced them. So what we found was employment standards officers who have no training in collections; they're good people, they work hard, but they have no training per se in collections. We're only collecting 25 cents on the dollar.

You mentioned the problem of workers agreeing to settle for less than 100%. That's something that Bob Mackenzie and the NDP did every day and every year that they were in government; regrettably, with 24% of the claims, the company's either bankrupt or insolvent. If there was a quick, easy answer to collect those fees — for example, I know Mr Martin; he's a good, honest, hardworking person — they would have taken it.

That's why I think what this is, the issue with the collection agencies, is an honest attempt to say the status quo isn't working, hasn't worked for any of the three parties. In the last year it hasn't gotten any better, so I can certainly indicate that we haven't been able to do a better job than the NDP in the last 12 months. That's why we're coming forward with this provision, to say we think we can do a better job, that collection agents, professional people — we talked to one chap last week with 25 years' experience in collections — can get those numbers up. We're not satisfied with little tinkering on the 25 cents on the dollar. We can do a better job than that.

Ms Mather: If your intent with the legislation is to increase the amount of money collected for workers, why

do you have the provisions written into the legislation which say that if the money collected is less than the total owed it can be apportioned out in the prescribed manner? Why do you have another one that talks about the director being able to authorize collections less than 75%? Why are they in there if they're not going to be used?

Mr Baird: The first one is obviously to ensure it doesn't go less than 75%.

Ms Mather: That's not what it says.

Mr Baird: The second one, if a company goes bankrupt and they say, "We can give you 50 cents on the dollar," would we forbid that by law? No. The company's going bankrupt, and we're forbidding you to get 50 cents on the dollar? The federal government undertakes the bankruptcy laws; we don't. Certainly Minister Witmer has written the federal government asking for changes because we think workers should be given a higher priority. But we have no intention of banning 50-cents-on-the-dollar settlements if a company's bankrupt. If that's all the money that's out there, if there's no money left —

Ms Mather: That's not what this says.

Mr Duncan: I want to thank you for a very thoughtful presentation that's brought home the reality that many people in our province face. I want to applaud the way you have, in a logical and non-rhetorical way, approached some of the flaws in this particular bill. We support a lot of what you said, and frankly we are somewhat supportive of the government in its attempt to find a way to collect better. Indeed, in the second reading debate we asked the government to withdraw the bill because we felt that it is bringing forward further amendments.

I want to conclude by asking you one question. You've done a very good job at critiquing the specifics of this legislation. We haven't had a chance to talk about the NDP's failure in the last five years to address these issues. It's good to see them back to their old selves again, defending the poor and attacking those who don't.

I'm at a loss as to the kinds of things we can do to the act to make it work better, not only for employees but, more important, for those people who are most vulnerable in our society. I'd appreciate it if you could wrap up by sharing any thoughts you might have to make employment standards legislation work better for the folks you deal with every day.

Ms Mather: With all due respect, Mr Duncan, I get really tired when politicians start saying, "We're going to do this because those guys didn't." The next time they're in, we're going to be watching them. The next time you're in, we're going to be watching you.

Mr Duncan: Right on.

Ms Mather: In terms of what should be done, we think the focus should be on prevention. It seems to us that this is locking the stable door after the horse has bolted. To improve things for low-income workers, we think there should be more prevention. We think it should be easier for people who work at part-time, minimum-wage jobs to become unionized. This government has made it harder for people to become unionized, and we think it should be easier. Those are the two things we'd like to see: We'd like to see prevention and we'd like to see it easier to get that first contract.

Mr Duncan: So you would agree that the government's decision to cut 28% of its enforcement and prevention budget and then eliminate the employment standards office was yet another one of the dumb cuts that saves a bit of money in the short run but costs all of us in the long term?

Ms Mather: They don't just save money in the short term and cost more money later. They help their friends and hurt the rest of us. That's the other agenda.

The Chair: Thank you all for appearing before us this morning. We appreciate it.

That leads us now to the Thunder Bay District Hospitality Association. Are they with us here today?

Mr Martin: They decided it's a waste of time, too, Mr Chair.

The Chair: Mr Martin, please refrain from your editorial comments unless it's your turn to talk. The fact is, the clerk advises me that we weren't able to get any response.

Interjection.

The Chair: Mr Martin, you're out of order. Show a little respect, please.

Mr Martin: You show a little respect. You show a little respect to the province as a government.

The Chair: We are.

Mr Martin: Like hell you are.

The Chair: Each group is allocated a set time, Mr Martin. We're pleased that you could —

Mr Martin: Your government has introduced a set of initiatives that have hurt nobody but the poor and the vulnerable in this province. That's what you've done.

The Chair: This isn't a forum for your making speeches, Mr Martin. This is a forum to listen to the people of Thunder Bay, not listen to other politicians. Thank you for your rant, Mr Martin.

In the absence of the Thunder Bay District Hospitality Association, the committee stands recessed until 2:30.

The committee recessed from 1153 to 1429.

The Chair: I call the meeting back to order for the afternoon session of our sixth day of hearings on Bill 49.

Mr Martin: Mr Chair, on a point of order: I was wondering why we come all the way here, at some expense to the government and ourselves, to hear people on this subject and we give them 15 minutes and in some cases don't allow for any questions of them when they're finished, then we have ourselves two and a half hours for lunch. Is this because it's the north? I'm lost for some rationale there because I know that in other communities you've allowed for 20 minutes per presenter but today we weren't allowed that privilege.

The Chair: It has to do with the number of groups that originally indicated they wished to attend. The time was divided by that. If after that point there were cancellations, I'm afraid those are beyond our control. It was the number of groups that had applied by the deadline and because of cancellations. It's very regrettable. I agree with you that there's considerable expense, and no one is more frustrated than I when a group indicates they'd like us to come up to Thunder Bay, or any other town, and then doesn't bother to show up. But that is why we had an extra-long break today.

THUNDER BAY AND DISTRICT LABOUR COUNCIL

The Chair: Having said that, our first group up this afternoon is the Thunder Bay and District Labour Council. Come forward to the table, please. Good afternoon. I remind you that you have 15 minutes, but it's up to you to divide that as you see fit either into presentation time or allowing for questions and answers.

Mr Paul Pugh: Thank you very much. My name is Paul Pugh. I am a member of the executive of the Thunder Bay and District Labour Council.

Before starting, I have a possible answer to the query that was made just before the beginning of these procedures. I noticed on the monitor out there that the chamber of commerce had a lunch meeting today, so perhaps the Conservative members of this panel were busy meeting with their friends from business or getting their marching orders; I don't know which.

The Chair: Just to disabuse you of that: Not one government member attended that lunch.

Mr Baird: Nor were we invited to the OFL breakfast. *Interjections.*

Mr Shea: I liked the breakfast this morning.

Interjection: The one by the Ontario Federation of Labour?

The Chair: I'm sure the NDP member was there. Please proceed.

Mr Chudleigh: Can we take the high road here, gentlemen?

Mr Pugh: Yes, I will. The Thunder Bay and District Labour Council would like to express its appreciation to the tens of thousands of citizens who protested at the Ontario Legislature and throughout this province as well as to the members of the opposition who maintained a sit-in at the Legislature until the present government agreed to allow limited public hearings, such as this one with its limited time, on its legislative initiatives.

The Harris government's approach to democracy would take us back a long way. For example, in 1836 Sir Francis Bond Head, former poor law commissioner, was sent from Britain to assume the office of Lieutenant Governor of Upper Canada. Shortly after arrival he declared that he would never "surrender to a democratic principle of government...so long as the British flag waved in America." A year later, during the course of the Upper Canada Rebellions, during which the people of this province protested against this government, Sir Francis Bond Head fled across the ice on his way back to Britain — none too soon, I might say.

Our first reaction to the title of Bill 49, Employment Standards Improvement Act, 1996, was that this was yet another example of political doubletalk, but on reflection we realized that the government may actually see this as an improvement. There is little doubt its friends — the rich, corporations, chamber of commerce and so on — will hail it as some sort of improvement.

For our part, we can only put Bill 49 into context as part of the government's broader assault on every gain achieved by working people through generations of toil, struggle and suffering. In every area, whether we look at housing, welfare, labour relations, health care, employ-

ment standards, health and safety, education, workers' compensation, child care and others, this government has consistently and enthusiastically attacked virtually every program, every piece of legislation that benefits working people and the poor.

Section 3 of Bill 49 allows a collective agreement to fall below legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay so long as the contract is deemed to provide greater rights "when those matters are assessed together."

In effect, this provision eliminates the concept of a floor of rights that workers can count on when negotiating with an employer. Workers now will have to bargain all those conditions of employment that previously were taken for granted into their collective agreement. This will provide employers the opportunity to pressure all workers, but especially those in small or weak bargaining units, into inferior agreements in order to avoid losing conditions previously assured.

This is clearly and blatantly a gift to employers. We are not at all amused by suggestions that this sort of improvement allows workers and employers greater freedom to negotiate suitable terms of employment. For workers this provision has nothing to do with freedom; it is a direct aid to employers, assuring that workers will face increased difficulties in achieving or maintaining decent standards of living.

In this, again the Harris revolution takes us back many generations. We cite the testimony of Richard Oastler before a parliamentary select committee investigating labour conditions in Britain in 1835:

"Oastler — The time of labour ought to be shortened, and.... Government ought to establish a board...chosen by the masters and the men...to settle the question of how wages shall be regulated.

"Committee — You would put an end to the freedom of labour?

"Oastler — I would put an end to the freedom of murder, and to the freedom of employing labourers beyond their strength; I would put an end to anything which prevents the poor man getting a good living with fair and reasonable work; and I would put an end to this, because it was destructive of human life.

"Committee — Would it have the effect you wished for?

"Oastler — I am sure the present effect of free labour is poverty, distress and death...."

Richard Oastler and English workers were calling for legislated limitations on hours of work, minimum rates of pay and minimum safety standards. In effect, they were calling for the very same things this government is trying to destroy: minimum employment standards, standards for which working people have fought for generations in this country as well as in Britain and other places around the world.

The parliamentary representatives of the rich rejected such initiatives by all means, including cynical appeals to freedom and job creation. It took years of strikes, demonstrations, disruptions and every kind of agitation to eventually secure legislated employment standards in the face of determined opposition by representatives of employers.

We now see that the Harris revolution is determined to take us back to the early 19th century, whether in its approach to democracy or employment standards or anything else that affects working people.

Section 3 of Bill 49 undermines minimum employment standards. Section 20 denies access to ministry enforcement of standards and requires unionized workers to pay for enforcement of whatever standards are left through the grievance procedure and arbitration process. This not only imposes a financial burden on workers victimized by unscrupulous employers, but also denies such workers access to the investigative powers of the Ministry of Labour. This measure is truly worthy of Harris's 19th-century revolution.

We now come to sections of Bill 49 where the government has outdone itself: sections 19, 21 and 32, enforcement for non-unionized workers. With these amendments the government proposes to end any enforcement by the Ministry of Labour so long as aggrieved employees opt to file a lawsuit against their employers. Employees will be forced to choose between making a complaint to the employment standards branch or filing a civil suit in the courts.

In order to encourage recourse to the courts, the maximum damages recoverable through employment standards will be fixed at \$10,000, a minimum amount as yet undetermined will be set and a time limit of six months from the time of filing a complaint will be established. In other words, the government of Ontario is assuring employers that any offences against workers in excess of \$10,000 or under an unspecified minimum or carried out in excess of six months can be carried out with impunity. The government will not intervene.

1440

Should a worker affected by employer abuses wish to obtain redress despite the government's self-imposed limitations, the only recourse is through the courts. A worker must choose within two weeks of filing a complaint whether to proceed through employment standards or via the courts. In the event the worker chooses to file a suit, the government has already ensured that proceedings will be lengthy and expensive to the aggrieved worker by its cutbacks to legal assistance programs. It's precisely the workers in non-unionized, poorly paid places who will be hardest affected by this program. Even a 19th-century Parliament would smile on learning of this set of amendments.

Still, the Harris revolution has not finished its work. Section 28 accomplishes this: contracting out the collection of wages assessed against employers in violation of standards to private collection agencies. In the event employment standards actually rules against an employer, collection will be contracted out to a collection agency. The agency will be empowered to collect a fee from the employer, but in the event the agency is unable to collect the full amount owing to the employee, the money collected will be shared between the government, the collection agency and the employee. In other words, the employee would have to pay the government and the collection agency out of the money recovered. This is truly a masterpiece. Even Scrooge would be hard-pressed to better this provision.

Fearful perhaps that its relentless assault on workers and the poor might create a backlash, the government also included some minor changes in Bill 49 which actually benefit workers. Section 8 provides for entitlement to two weeks' vacation yearly, regardless of whether the employee actually worked the entire year. However, this does not affect actual vacation pay, which remains at 4% of earnings. Employees will also be credited with benefits and seniority while on pregnancy or parental leave. Whatever the government's motive for introducing these changes, they do represent an improvement.

In conclusion, we wish to commend members of the opposition for their part in restraining, or where this has proven impossible, at least publicizing this government's vicious attacks on working people. As for us, we look forward to the day when the Harris revolution is noted as a curious throwback to the 19th century in history texts. Meanwhile, we intend to join with others throughout the province in continuous actions of whatever form to protest and combat against this government's vicious assaults on decency and fairness.

The Chair: That leaves us one and a half minutes per caucus, and the questioning this time will start with the government.

Mr Baird: Thank you very much for your presentation this afternoon. I was wondering if you might have any specific suggestions for us. I can tell you, we're just simply not satisfied with collecting 25 cents on the dollar. It's a problem that all parties in government have had. The Liberals had a problem with collecting more than 25%. The NDP, as I mentioned this morning, disbanded the collections branch at the Ministry of Labour, fired 10 people and weren't able to increase the collection rate. We haven't been able, in the last year, to get it significantly up using the current system. We've got a proposal on the table to move to the collection agency to go after the deadbeat employers to ensure that workers get their money. Do you have any specific suggestions for us that maybe the NDP didn't think about in five years or the Liberals didn't think about in five years that we could use as an alternative?

Mr Pugh: I would say that possibly this wasn't a priority for previous governments, which it should have been, but if you are serious, if you honestly want to deal with this thing, I'm sure you have staff who could put their minds to work on it. If they wanted to, they could write me — I can leave my address with you — and we'll come up with a plan. For example, we know that you've decided to eliminate the assessments on employers for — what was it called? The OHIP before. I forget the name now.

Mr Baird: Just for a small business, though.

Mr Pugh: That's right, but you could reimpose it on them if they choose not to pay back. I'm sure we could come up with all kinds of things if you seriously want to deal with it. I don't think you're serious. I think you're bullshitting.

Mr Baird: I'll tell you, we've got some very exceptionally capable people within the policy branch of the ministry at employment standards. We've certainly tried. I know the Liberals made an earnest attempt; I certainly

know the New Democratic Party made an earnest attempt to try to do better. I guess the reality is, we simply don't have folks who are experts in the collections branch.

Leah Casselman, the president of OPSEU, came before the committee and said that the employment standards officers themselves didn't have a personal or pecuniary interest in collections of funds. Adding that through collections agencies, it's obviously in their financial interest to retrieve the money, because if they don't retrieve any money, they get nothing.

I think that's where the fundamental change lies. I'm very earnest in this and very sincere. I think it's abhorrent they were only collecting 25 cents on the dollar. We must do better. If you have any suggestions — I make this request earnestly — please forward them on, because we'd love to hear them.

Mr Pugh: I think, seeing as how you're the government, we'll put the onus on you —

Mr Baird: We are presenting, though. This is our plan.

Mr Pugh: Let me finish here. If you really are serious, as you claim you are, I'll leave my name and address with you, and your ministry officials can contact me and I'm sure that I, not personally but through the labour council, will be more than happy to assist you in dealing with this problem.

Mr Baird: I look forward to getting it, and I'm very sincere.

Mr Hoy: Thank you very much for your presentation today. How much time do we have?

The Chair: I'll give you two minutes.

Mr Hoy: Thank you. In speaking about the private collectors that the government wants to put into place, as you know, settlements could be made down towards 75% of the actual request. But it brings up the question that someone who has a similar problem occurring to them in Hamilton might have a settlement that is quite different from someone in Thunder Bay. Would you agree that could happen? If you do, what do you think about that certain aspect of this?

Mr Pugh: I'm not sure I follow the question.

Mr Hoy: If two people have a similar claim but there's a range whereby the settlement could be made, between 75% and 100% of what they're owed, someone in another part of Ontario could conceivably receive, let's say, a settlement of 80% of actual and someone else could get 85%. Does this seem reasonable to you? Are you willing to see that happen in Ontario from one community or area to another?

Mr Pugh: No, certainly not. That's why we're opposed to contracting out to collection agencies. We feel that a grievance to a worker is a grievance to a worker, regardless of what part of the province it takes place in. The government should be serious, if it really is concerned about this 25% figure, to find a way of making sure that all workers are paid back 100% of what's owed to them.

Mr Martin: What was your experience with the wage protection fund that we put in place that this government has significantly diminished since it came to power? How many employees, particularly non-unionized employees, do you think are really going to be able to afford a

lawyer to go to court to fight for the little bit of pay that they're owed by some company that just closes up and walks away? There are two questions there.

Mr Pugh: Now, I'm not speaking for our labour council's position, but I know personally, as a worker, if I were in that position, I would just more or less have to give up and accept whatever I could get because it's just too expensive. As the labour council pointed out in our brief, the availability of legal assistance is getting harder and harder to achieve, so programs such as a wage protection fund are essential if we're going to have any sort of minimum standards.

Mr Martin: Have you any experience at all with the employee wage protection fund that we put in place?

Mr Pugh: I know the program you're speaking of. There have been small firms in this town that have gone under. Unfortunately, I'm not in a position to answer that question. I've had no personal dealings with the problem.

The Chair: Thank you, Mr Pugh. We have four ministry staff here. If you care to leave your name and address with them, that will certainly expedite things. Thank you for coming before us this afternoon.

1450

NORTHWESTERN ONTARIO STEELWORKERS AREA COUNCIL

The Chair: Next up is the Northwestern Ontario Steelworkers Area Council. Good afternoon. At the risk of repeating myself, we have 15 minutes. Feel free to divide that as you wish between presentation time or questions and answers.

Mr Moses Sheppard: Thank you. My name is Moses Sheppard. I'm a Steelworkers staff representative, working out of Thunder Bay, and I service an area from Red Lake to Manitouwadge. I'm also deaf, so if you have difficulty hearing me, yell at me, and if I have difficulty hearing you, I'll throw something at you.

First of all, I'm here on behalf of the Northwestern Ontario Steelworkers Area Council. It is an amalgam of all of those units between Red Lake and Manitouwadge. It is on their behalf that I make this submission and on their behalf as well that we welcome you to the great northwest.

The elected officers of our union in Ontario have already made a presentation to this committee, and I will not repeat the things that they have said. I don't have a formal written presentation, albeit I'm giving you a couple of sets of documents, which I will come back to momentarily.

The lead-up to all of this — and certainly the press here in the northwest and, I suspect, throughout the rest of the province has talked about the minister's undertaking. I think the word that we've used is to develop "flexible standards." Maybe before this thing is over, somebody can tell me what that means, a "flexible standard." Elastic bands are flexible, so I'm wondering if this is a kind of a Tory membrane that's being developed. In any event, I'd like to know what you mean when you talk about a flexible standard.

Here in the northwest, we'd also like you to remember our geography. We've got a lot of it. It's 600 kilometres. I drive to Red Lake frequently. I drive to Manitouwadge.

It's 400 kilometres. People in Pickle Lake don't know what an employment standards office is. They don't come into contact with these animals. They don't know what that means. Employment standards in Pickle Lake is a 1-800 number. Employment standards throughout most of the northwest is a 1-800 number. So whatever it is that Bill 49 looks like at the end of this exercise, I want to know who's going to go to Pickle Lake and tell people what it is and how they're to seek enforcement.

If you parcel this out, if you're going to privatize it and people have to go to Pickle Lake to do investigations, who will pay for the cost of travel? Who will pay for the hotels and motels? Who will pay for those periods when they're down because of weather? I don't see that anywhere in the bill. So when you formulate whatever you're going to do — and I'm not at all suggesting that we'll like whatever it is you're going to do, but whatever the hell it is you do, think about the people in small, rural northwestern Ontario communities who've never had an employment standards office in their lives.

The 1-800 number was free. I take it that with your proposal we'll even lose that, so that we'll have to get the quarter or the dollar to phone these birds, whoever they happen to be. If that indeed is an Employment Standards Improvement Act, that appears to us not to be a great improvement, quite frankly.

Let me just turn my attention to the whole question of standards. Why standards? Traditionally in this province, standards are our decency quotient. It is a measure of our civility. It is how we treat those people who, for one reason or another, don't belong to unions, don't have a lot of resources, who may not be terribly educated. It is a standard that the government of Ontario has traditionally used as a measure to say, "These people are worth this, as a minimum." It now appears to us that you're going to screw off with that as well.

I've given you two documents. I'd like you to refer to them, because the question I think of, "Why standards?" — you'll find the answer in the first document. There's a picture of a little boy there. His father got killed in Campbell Red Lake Mine on May 29. This young man needs serious corrective heart surgery. He's on oxygen at his home. Campbell Red Lake cut off the benefits for the family last week. That's why we need a standard. If you don't have a standard, companies will make standards. That's not a standard we ought to be a part of in Ontario.

The little guy asked a question, and I ask it of you since he can't be here. He said: "My dad died in Campbell Red Lake Mine. There are no health care benefits now. Does that mean that I too have to die?" Phone him up. Tell him what the answer is. That's what you're messing around with.

Let me take you to the second document I've given you. If there's a name on it I would ask you to scratch it out; it will not be there deliberately. This is a young man who came — two young men, in fact. This is the record of one of them who came to our office in 1994. They were not Steelworkers. They worked in a very small plant. What I've given you is a history of his working hours from 1988 until 1994, when he complained to the employment standards and they fired both of them. This

is what he was complaining about. There are in this document 2,000 hours of overtime he did not get paid for: 2,000 hours in the period 1988 to 1994. We charged them under the Labour Relations Act and we managed to get him pay for 838 hours. That means he got screwed out of 1,200 hours. Just have a look at some of this.

If you go to the second page, 1991, right at the bottom, in the period October 16 to 31, 1991, he worked 160.5 hours — 72.5 hours overtime. Did he get paid? Not one God-damned miserable cent did he get. Go to the top of page 3. In the period November 1 to 15 he got 146 hours' work — not one hour of overtime; nothing. The last page, 1993: 122, 117, 125, 136 in two-week periods.

He got all that he was entitled to under the statute. The statute will only allow you to retrieve two years. That's the statute as it was. When you birds are finished with it he won't even get that. You see, we'd all like to live in the days of Norman Rockwell where we sit outside and rock in our chairs and we bring soup to each other when we're sick. That is not the world of Ontario in 1996. It is miserable and mean out there, and this stuff happens.

I happened to pick this up because they were friends of mine. God knows how much of it goes on in this city and throughout the province. It is not, I can assure you, a single incident.

That is what you're going to do when you open this act, this so-called Employment Standards Improvement Act. I don't doubt it's an improvement — an improvement for bad employers. I'm not saying that every employer in this province is bad — that is not true — but there are some bad beggars out there. What you're going to do with this act is you're going to see more and more and more of this kind of stuff.

Did these young men go to the employment standards branch? Oh yes, they did, and they said, "We think we're being screwed out of overtime." The branch officers here in the city said, "You have to give us your name and your address, and you might get fired, and if you get fired there's not a damn thing that we can do about it." There is a provision in the act — there was — for the branch to do surreptitious investigation. They didn't do it. They would not undertake to do it. They said, "Give us your name, your address, make your complaint public and you may get fired." That is an invitation to the worker: "The best thing you can do is shove off and keep quiet." That's why that went on from 1988. I'm sure that none of you know him and I'm sure that none of you would want personally to injure him or to insult him, but that is what this young man put up with.

There are other things. They had paper masks for chemicals, and when we complained, they went and got a proper respirator with the carbon filters. They had one respirator for four employees. I don't know what the hell the other three were supposed to do. They had a nine-inch fan in the ceiling and they were told, "Don't turn it on because that costs electricity."

1500

You are now saying to these people, to people like this: "This act that we presently have is much too onerous on the employer. We have to give them a break." You should have read Abe Lincoln. There was a point old Abe came in and freed the slaves. Have you ever

thought about that? That might be the answer to this problem. Just say, "No rights, no nothing."

Here we had a piece of legislation that even in the good days, even in the days of the New Democratic government when we had officers in offices, didn't get enforced. You've got to push them. You've got to hammer them. What you're proposing is: No offices; contract it out. If you're at Pickle Lake, phone somebody somewhere, track them down, and if they come up here and spend three or four days investigating it and you're owed a thousand bucks, by the time this guy gets finished investigating, you won't have anything left anyway.

I don't know what it is that you people, the government, have against workers. This province, whatever it is, is being made great in part by workers, very ordinary workers who go to work every day and do whatever it is they can. They've done that since the date this province was pulled together. This government is intent on hammering the hell out of every one of them. The only thing you've done since you've come to power is to screw around with labour legislation. I haven't seen a proposal that says that from now on when there's a bankruptcy, the banks can get to the back of the line and the employees go to the front. That would be a simple amendment if you really do want to improve this, but I don't see that, and my sense of it is that it's not on the agenda.

For all of those reasons and for dozens and dozens of others that we discussed with the minister of the day, we ask you, if you really are serious about improving the working lives of working Ontarians, then for the love of God leave this thing alone. That's the worst that should happen. The best that should happen is that you amend it so that it is kind and gentle to workers. Thank you.

The Chair: Thank you, Mr Sheppard. That's just over 13 minutes, but I'll allow a brief question or comment from each caucus.

Mr Hoy: Thank you for your comment. You talked about some issues that are pertinent to the north but no less so in other areas of the province from time to time. I appreciated your comments in regard to awareness. You're concerned about access for the people here in the north in particular and about information — how do they learn of their rights etc? — in a large part of your presentation. I take that with great interest. You talked about the decency quotient; I made note of that. Minimum standards, I believe, do provide a level of decent employment opportunities. I do appreciate your comments very much.

Mr Martin: I can't help when you speak, Moses, but to think of some of the verses: "There are strange things done in the midnight sun" by the folks who mine for gold. I think it's really important that the committee should come north and hear from people like yourself. You tell the stories because you've worked with the people who are living them. Every time I hear you, I am personally moved and made more aware.

It's too bad the committee didn't drive up so that they could understand some of the challenges we face. I drove from Sault Ste Marie yesterday. I started at 1:30 in the afternoon and I got here last night about 11 o'clock. We do face some different and interesting challenges in

northern Ontario, and as we make legislation that affects the people you represent, it's important that we understand how it will impact on them. It's too bad you only get 15 minutes here today because I know you have other stories you could tell us. I think you've told it as eloquently and elaborately as anybody could and I don't think I could add anything to it by asking you a question. I would just say thank you for doing it again.

Mr Sheppard: If I could, Mr Chairman, this is in the public domain. It was settled in front of the Ontario Labour Relations Board. We have taken any references to it out because we're not in the business of embarrassing any single individual — which is not to say that I wouldn't embarrass them collectively. We have taken it out for that reason, but it is in the public domain.

Mr Baird: Thank you very much for your presentation. Just a number of comments. The 1-800 number that you mentioned for the north, they're showing no intention to get rid of that. That's not in the bill. It's important as well to note that we're not contracting out any investigations, simply the collection of orders that have already been issued. The previous government is the one that disbanded the collections branch at the Ministry of Labour, so we're not disbanding the collections branch; that was already disbanded by the previous government. I think it's important to make note of that.

I'd welcome your comments on a number of things, though — if not now, at any time. I'd love to hear them. With respect to bankruptcy, your comments that workers should get priority I think are extremely apt. I completely agree with you and I know Minister Witmer does as well. The federal Bankruptcy Act is the legislation that governs that. Regrettably, it's not one that this committee has the authority to change. I know it's one of the early measures that Minister Witmer took in contacting her federal counterpart to try to push them to make those changes and something we'll continue to push for, because before banks get paid, workers should be at least entitled to the money they earned themselves. So just a number of comments. We appreciate your presentation.

The Chair: Thank you, Mr Sheppard. We appreciate your taking the time to come before us here today.

CREDIT BUREAUS OF NORTHWESTERN ONTARIO LTD

The Chair: Next up will be the Credit Bureaus of Northwestern Ontario Ltd. Good afternoon. Again, you have 15 minutes to divide between presentation and questions and answers.

Mr Tim Waite: Good afternoon, everyone. Welcome to Thunder Bay. I want to thank the committee for coming to Thunder Bay and hearing all of our views. My name is Tim Waite and I'm the president and general manager of the Credit Bureaus of Northwestern Ontario. I'm here to talk about a specific part of these proposed amendments as they relate to my industry.

I wish to address the matter pertaining to the use of private collection agencies. I believe that using professional licensed collection agencies will accomplish many of the challenges the government is faced with today. You can turn time and efforts into more productive and efficient use of existing manpower. We are not suggest-

ing that your employees are inefficient, but would simply say that when it comes to collecting past-due accounts, we are more efficient.

My presentation closely follows the presentation given to you by my colleague in London last Thursday. While I'm not a designated spokesperson for our industry, I've been an active participant as a licensed collection agency for over 15 years and feel that I can speak with a certain amount of firsthand knowledge.

Our industry is one that is very closely regulated. All agencies are bonded and licensed and adhere to strict guidelines, regardless of the size of the agency or location. I refer to my own company and the Associated Credit Bureaus of Ontario because I'm familiar with the policies and procedures of this group and I play a part in the decisions and the quality of the service that we as a group of 25 privately owned agencies provide to local businesses in every part of the province.

I spoke earlier about time and efficiency. Collecting past-due accounts is all we do. Generally speaking, there is nothing more inefficient than someone doing something they are not trained to do. Worse still is having someone doing something such as collecting a past-due account if they don't feel comfortable doing it. We surround ourselves with people who are licensed and trained to speak to debtors. They are trained in the technique of negotiating and finalizing matters as fast as possible, and they are trained to ask for and receive payment in full.

Allow me to list a few of the reasons why we are successful in our collection efforts: the intervention of a third party; consistent and regular follow-up; knowledge of court rules and procedures; ability to negotiate settlements on an ongoing basis; being able to utilize technology to locate assets and really realize on those assets.

Allow me to address the proposed provisions, specifically section 73.0.2(2), which states:

"The director may authorize the collector to collect a reasonable fee or reasonable disbursements or both from each person from whom the collector seeks to collect amounts owing under the act. The director may impose conditions on the authorization and may determine what constitutes a reasonable fee and reasonable disbursements."

The simple answer to my concern appears to be dealt with in subsection (4) of the same section, which states: "Clauses 22 (a) and (c) of the Collection Agencies Act," which we prescribe by, "do not apply with respect to fees authorized under subsection (2)" of this act we're speaking of today.

Allow me to review my concerns. Section 22 of the Collection Agencies Act states:

"No collection agency or collector shall,
 "(a) collect or attempt to collect for a person for whom it acts, any moneys in addition to the amount owing by the debtor;

"(b) receive or make an agreement for the additional payment of any money by a debtor of a creditor for whom the collection agency acts, either on its own account or for the creditor."

1510

I'd like to share with you my understanding of the spirit of the act of section 73.2(2). In most cases, a

portion of the amount outstanding will be trust money, money owed to another person. The normal business practice of a collection agency is to collect an account, keep an agreed percentage and return the net portion to the client. In this case, the client would be the Ministry of Labour, who is assigning a trust receivable to us. Naturally, they want him or her, the employee or the ex-employee, to receive the full amount.

My concern is essentially this: The two acts are in conflict for us. Following legal consultation, I'm advised that if this section is passed in its present form, fees may be added. This opinion was immediately qualified by suggesting that at any time there is uncertainty in law between acts, the act with restrictions or imperative rights on any individual will prevail.

As a licensed collection agency, we must be aware of any detrimental consequences that could arise out of obvious violations, of course. I would therefore request that section 73.2(2) be fine-tuned by adding, "In all circumstances the reasonable fee and disbursements or both collected from each person from whom the collector seeks to collect shall be deemed to be moneys owing by the debtor and shall not be considered moneys in addition to the amount owing by the debtor," which really means, by utilizing a collection agency, it is not going to cost the employee or ex-employee one red cent.

It is obvious that the intent of the section is to extend the powers of the Collection Agencies Act and to address the problems contained in the act because they made reference to it in section 73.0.2(4). The goal should therefore be to refine the wording of the act to uncover any difficulties that have to date really gone unnoticed.

I respectfully recommend to this committee that it makes the drafting amendments so as to ensure that there are no uncertainties for the future.

The Chair: Thank you very much. That's six and a half minutes, so we have eight and a half minutes left, or just under three minutes per caucus. This time the questioning will commence with the third party.

Mr Martin: I'm at a bit of a loss as to how to proceed here, in that I can't help but feel that you have a bit of a conflict of interest in this whole matter. However, given the presentation that we had just before you and some of the concern re what do we do about folks in places like Pickle Lake who lose their jobs and have to now depend on agencies such as the one that you represent to do the collecting, do you have the manpower and the resources necessary to cover the province in a way that will make us all comfortable that all of this is going to be done, and in a timely fashion?

Mr Waite: First off, Mr Martin, my organization out of Thunder Bay does collections throughout northwestern Ontario right now. My affiliates in other cities in the province of Ontario have all the abilities that we would have here to go forth and collect outstanding amounts for those employees or ex-employees, as it may be. So we're doing that now.

Mr Chudleigh: Thank you for an interesting presentation. My son was involved in a summer job once when he was I think 16 or 17 years old and didn't get paid, and we went through the employment standards officer and tried to collect some money in that case.

I understand that now or for some time, we have been, as a government, collecting something like 25% of the money that might be available to be collected. I would like your opinion as to whether that 25% is a reasonable level that you might expect an industry to collect or whether you think that would be low. I don't know if you want to play the numbers game, but you might want to venture a guess as to what level you could reach.

We, as a government, I don't believe would be satisfied with anything less than 100%. That would be our goal. It may not be practical to achieve, but we would leave no stone unturned until we got there. I wonder if you could make some comments on those levels of collection?

Mr Waite: We would expect, sir, looking at the preliminary numbers of outstanding amounts, that we could probably up that by another 25% to 30%. To reach 100% collection, I don't know quite honestly. I really don't know if we could do that. As an average standard in the industry, 45% is a realistic figure. From every \$100 listed with us, we collect in the vicinity of 45% to 50% of that. Again, 100% would be Utopia. We'd all love to do it.

You have to remember we work on a commission, so the more we collect, the better it is for us, the better it is for the government and the better it is for the employee, and that's the world that we work in, production. We don't collect, we don't get paid, period.

Mr Lalonde: I would probably call your brief a good sales pitch, but I tend to agree with the government that the past practice didn't work out, since only a little over 24% was collected in the past. I say I tend to agree with some restriction though.

I'd just like to ask you the question, what is the usual percentage of commission that you're asking of your customers at the present time?

Mr Waite: Right now?

Mr Lalonde: Yes.

Mr Waite: Anywhere between 25% and 40% is average today.

Mr Lalonde: What percentage of successful claim of overdue accounts would you be able to collect?

Mr Waite: As I indicated, somewhere between 45% and 50% is the target that we shoot for.

Mr Lalonde: So it's just about 25% over what has actually been collected. Do you think it would be fair though, this Employment Standards Act that would specify that your commission should come from the employers instead of the employees?

Mr Waite: That's the way it is, Mr Lalonde. This is not going to cost the employee anything. That's what I'm talking about.

Mr Lalonde: According to the act, up to 75% of the total amount, so where would the other 25% —

Mr Waite: For settlement, that's correct.

Mr Lalonde: So 25% would go to the collection agency?

Mr Waite: Not necessarily so, but if we end up collecting 75%, that 75% is going to go back to the employee. Our cost for collection will be put to the individual or company that we're collecting from, as I understand it.

Mr Lalonde: We seem to be misinterpreting this act then, because I spoke to government members, and they told me yes, it will be 75% of the money collected and the other 25% would go to the collection agency.

Mr Waite: As I understand it with that part of the act, we would be able to settle for 75%, if it came to that, but again, I want to reiterate we get paid for performance. We want to collect 100%, but sometimes the old adage, you can't get water out of a rock, and in some cases it's best to settle and carry on.

Mr Lalonde: In other words, you're saying at the present time your interpretation is that whatever you collect, the employees will get 100% of it?

Mr Waite: Yes, sir.

The Chair: Thank you, Mr Lalonde, and thank you very much for appearing before us here today and making your presentation. We appreciate it.

1520

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 87

The Chair: That leads us now to the Canadian Union of Public Employees, Local 87. Good afternoon. Again, we have 15 minutes and as you see fit it can be divided between either presentation time or questions and answers.

Ms Judith Mongrain: I'm Judith Mongrain, president of CUPE 87, and CUPE 87 represents 750 members working for the city of Thunder Bay and approximately 50 members working in the municipalities and townships of Neebing, Conmee, McIntyre, Ignace, O'Connor, Marathon, Nipigon and Nipigon Hydro.

When we applied for standing at the hearing, there were several major changes proposed by the provincial government regarding the Employment Standards Act. In the last week, we've been advised in the media that these changes are not about to be implemented but will form part of a larger package of changes to be released at a later date.

The government needs to ask itself some very important questions before making dramatic changes to the act:

- (1) What is the purpose of the act?
- (2) Does the current act work? Is it up to date?
- (3) What are the strengths and weaknesses of the act?
- (4) How can the act be changed for the benefit of all Ontarians?

Before any change is implemented, a thorough knowledge of why the act was implemented is required. We are quite confident that former governments did not create this act or amend it/change it because they wanted to meddle in a perfect work environment. The act is the minimum standard, and from a working person's point of view, "minimum" is the active word.

The changes to the act that precipitated these hearings would do nothing for working people, and the negative impact of these changes would be most significant on the working poor.

Where would the positive impact occur? For those employers who rip employees off.

In this current economic climate, with fewer and fewer jobs available, a stronger act is required, not a weaker

one. Employees are living in constant fear of losing their jobs. Therefore, employers can take advantage of that fear, and they do. More and more workers feel that if they complain or point out that their employer is violating the labour law, they may lose their jobs.

If you get fired, what do you do? You can't collect employment insurance or welfare? Remembering those reassuring words of Premier Harris that children will be removed from the homes of parents who can't provide for them doesn't instil much security in a working person's life.

Minimum and maximum monetary limits and six-month time limits for filing complaints would allow employers to steal two statutory holidays per year from employees who make less than \$100 a day — that's any working person making less than \$12.50 an hour — as long as the first non-payment was more than six months before the second non-payment, January to August.

With a maximum payout of \$10,000, employers would make money on the deal, 100% savings on any amount over that maximum. We've heard the logical reason for such change is that these laws are unnecessary or that the limited number of investigators available are overwhelmed with complaints. So if Ontario is a worker's nirvana, why would investigators have too much to do?

If this kind of logic prevails, then let's just decriminalize violent crime, theft, break-and-enter and illegal drugs, and we won't require the police and the legal system any more. Of course not. These laws are in place to protect everyone. But employment standards are only in place to protect working people.

These proposed changes also allow employees to take their employer to court to get their lost wages. How long will a worker continue employment when the employer finds out they're going to court? Where are these people to get the money to pay for a lawyer when there's no legal aid plan to assist them?

We've also heard the argument that if there were fewer rules and lower wages, employers could hire more people. Two people making \$7.50 an hour instead of one person making \$15 equals two people working in poverty.

At the same time, there's the suggestion in these proposed changes that employers be allowed to have their employees work up to 60 hours a week, instead of 44, without overtime. This will not encourage employment of more people; it will encourage layoffs. Overtime was created to make employers pay for not having an adequate number of employees to do the work and to compensate workers for having to work when they should be at home with their families.

The touchstones this government has are with the powerful, not the powerless. Have you ever flipped burgers for a living? We don't mean to then leave the workplace and go home to mom and dad, but to go home with a paycheque at minimum wage to a spouse and children. Have you ever had to make the decision between purchasing a loaf of bread or cough medicine for the kids? Have you looked in your wallet two days before payday and realized you don't have enough money for milk? Have you ever had to send your kids to school without a proper meal, warm clothes and mittens in

winter? Have you ever had to make the decision of putting your job and your family's survival on the line by standing up to your employer and saying, "You didn't pay me what you owe me"? Have you ever needed to seek legal advice and not been able to afford a lawyer? These are the touchstones that too many families in this province are faced with. This is the reality of the new Ontario.

The Employment Standards Act should be changed. It should be changed so that all employers in this province have to be honest corporate citizens; and when they are not, not only should they have to pay their employees what is owing, but they should be fined heavily so that ripping off workers becomes a liability, not an asset, on their balance sheet.

The Employment Standards Act should be changed by tightening up the number of hours a worker can be made to work so that employers would be encouraged to hire more workers, not allowed to overwork the employees they already have.

The minimum wage should be raised and no exemptions should be allowed, so that the category "working poor" should be eliminated. The act should not be changed so that more workers become working poor. No employer should be allowed to have workers employed for tips only.

As the number of complaints of violations of the act rises, the number of investigators should be increased. If there were enough investigators available to deal with violations, employers would get the message that violating the act was an expensive proposition and just maybe the number of violations would decrease.

The current government prides itself in saying that Ontario is open for business, but what it should be doing is lowering its head in shame because it's declared open season on workers and their families. Making Ontario into another poor American state or into Mexico is not what we want. It's obvious to working people from the flippant way these proposed changes to the act were referred to by the minister as "housekeeping" that the government in power has no contact or reality with the working people in this province.

The people of Ontario want jobs that provide enough money for them to support their families. The working people of Ontario want employment standards that protect their rights to be paid correctly for their work and protect them from abuse. The working people of Ontario do not want to be held in servitude at the mercy of a benevolent employer. Thank you.

Mr Ron Johnson (Brantford): Thank you for your presentation. You highlighted a number of points. I'm trying to find the page you were on, but it doesn't really matter; I remember what you said. You had a number of recommendations, one of which was increasing the minimum wage, and then you went on, a few paragraphs afterwards, and talked about us being the United States of the north. You had some good points in here. With respect to the minimum wage issue, are you familiar with what the minimum wage is south of the border?

Ms Mongrain: In some of the states it's \$1.50; in some of the states it's \$5.00. It fluctuates from state to

state. I know that in one of the western states it's now at \$4.97, but I'm not sure if that's California or Oregon.

Mr Ron Johnson: Then you are familiar with what the minimum wage is here?

Ms Mongrain: Yes.

Mr Ron Johnson: So you still feel, despite that, that here in Ontario to do what you would suggest, to eliminate the category of what you called the working poor, one of the ways to do that would be to increase the minimum wage here. Is that what you're saying?

Ms Mongrain: Yes, I am. Our expenses and our reality and our survival in Canada are very different; US\$5 an hour in a southern, warm American state — though not high and probably not survivable — is very different than for us here who this last winter went through fuel bills of \$160 a month.

1530

Mr Ron Johnson: You're not concerned at all that increasing the minimum wage here would drive jobs south of the border? That doesn't bother you? You don't think that would happen?

Ms Mongrain: The type of jobs that are receiving minimum wage are service jobs, and right now service jobs are what we are getting in Thunder Bay. While we lose large employers and jobs that paid a decent wage, we've got more McDonald's and more Wendy's and all of those types of enterprises opening all over town. The service industry is on an increase and those people can afford to increase the wage of their employees.

Mr Hoy: Thank you very much for your presentation. The service sector is one that has great concern about this proposed bill. I believe it to be quite true that those service jobs are here. There doesn't seem to be a migration as there is in other aspects of job employment with multinationals etc. There could be a whole discussion on that.

The comments you made about living in Ontario, and indeed Canada, are well taken. I'm from an agricultural background and I'm fully aware of some of the advantages the southern states have because of their warm climate. Here we may have to provide families with boots and heavier clothing, whereas down there they do not, and there are certain advantages that they have where their minimum wage, as you stated, would offset many of the things that apply to ours being even higher.

Clearly, you're concerned about those who are in the mid-range of employment dollars. We take your advice and your comments here seriously and appreciate your presentation.

Mr Martin: I also appreciated the presentation. I thought it was well done and certainly spoke for a lot of the people I've come in contact with who are concerned about this and who have been impacted by some of the initiatives of this government in its short year in power in Ontario.

I don't think anybody would disagree that probably one of the things that we need in our economy today, if we're going to grow and get healthy and create work and jobs for people, is some level of stability and consumer confidence. In my community people just aren't spending money any more because they don't know if they're going to have a job tomorrow or next week or a month

down the road, and so they're really cautious. The small business community is suffering. We're all suffering a bit of a malaise.

You represent a different group of people than I rub shoulders with every day here in Thunder Bay and area. What is the general feeling among your members at this point re the whole question of stability and confidence and hope in the future?

Ms Mongrain: With all of the changes and cut-backs — we just went through an extensive reorganization and now we're into re-engineering, which is the new word; when re-organization doesn't work you call it "re-engineering" and do it again — there is a great deal of caution because we don't know if we will have jobs tomorrow, we don't know if we are going to be able to support our families.

Just so you have an idea, municipally, the average age of our members is 41. That's very high compared to the days of yore. We haven't had a great deal of new hiring in the last five or six years, and — this information comes from a program the employer had — I represent workers whose average gross earnings are \$31,000 a year. You figure that take-home is about \$16,000 a year. We're not talking about mid-management or people in the \$45,000-and-up group; we're talking about workers from \$10 an hour to professionals with university degrees at \$23 an hour.

Mr Duncan: So you can imagine how people who are making \$5 and \$6 an hour are feeling if you're feeling the way that —

Ms Mongrain: The 750 members have families. Some of them have their spouse working for minimum wage, or the kids are a little older and are trying to help out at home and they are at minimum wage jobs, so it is impacting on my membership.

The Chair: Thank you very much, Ms Mongrain, for appearing before us here today and making your presentation. We appreciate it.

THUNDER BAY AND DISTRICT INJURED WORKERS' SUPPORT GROUP

The Chair: The next on our list this afternoon is the Thunder Bay and District Injured Workers' Support Group. Good afternoon.

Ms Muriel Poster: The Thunder Bay and District Injured Workers' Support Group two years ago formed the widows, widowers and dependants committee. I was the inaugural chairperson and remain so until this day. I will do my best to stick to the issues at hand, but these proposed changes do have some effect on our group. However, you must understand from the outset that I believe there is a direct relationship between employment pay and health and safety. Employers who use low-paid staff tend to do little in health and safety training and prevention.

Our group represents injured workers. We currently have over 600 members in the northwest region. In addition to this, we have approximately 100 associate members who are from outside of our own region. The majority of these workers suffer from permanent injuries and disablement as a result of their work.

A good number of these people are older workers. They are, for the most part, returned to employment under restrictions. These may be reduced hours or they may have limits on the length of time they are able to sit and stand. They may not be allowed to lift, bend or do other particular activities. They may also need specialized equipment to do their jobs. All of these conditions tend to make the potential employer view these workers as less desirable than more able-bodied workers. This leaves many of these most vulnerable people only the most undesirable of jobs to choose from, if any exist at all.

With the pending legislative changes, workers will have many fewer rights within the workplace. The low-end workers will have little or no protection. Fear will dominate people's lives. They will be forced to work injured out of worry of not being able to find a job anywhere else. They will be afraid to press for what rights they do have out of fear of retaliation or outright abuse by the employer. Under the conditions of the amendments to this act, the employers will gain more control over the most disadvantaged workers.

If someone is earning anything more than minimum wage, does this nullify his right to breaks? Is it your intention to have everyone working as if they were assembly line pieces? The only breaks these machines get are breakdowns.

If someone works in a minimum wage job, is that person deemed capable of earning a wage, no matter what their physical condition, since any minimum wage job will do?

Injured workers need to be able to have breaks and to be assured that their restrictions will be respected. Will injured workers who are only able to work restricted hours be entitled to vacation pay, for instance?

If claims are to be farmed out to collection agencies, will workers then be expected to pay to exercise their rights? Workers, already being ripped off by the employer, could then pay a user fee or a copayment to file their claim with the appropriate agency and for the proper documentation. After that, the collection agencies would be able to reap their own profits from the moneys that are rightfully owed to the worker.

We've had dealings with one particular employer in the service industry who has clearly demonstrated orally, as well as by his actions, that workers who know more than their basic duties are more than hazardous to the employer and are required to be dismissed. Not only are these workers let go from the jobs they hold, but he does all he can to make sure no one else will hire them. This employer has advised his management team that workers need not know their rights. That would prove to be advantageous to the workers and might cost the employer money.

1540

We have had employers who have insisted that they will accommodate a worker, one who is physically unable to do a job, for the sole reason of forcing him to go back to work so that he can be dismissed on some other convenient charge, but saving them the cost of paying through WCB. Small employers and those medium-sized firms won't even return their workers back to the actual job in which they were hurt. These workers have no

protection, either through the Employment Standards Act or under WCB.

Another company, through the services of an ergonomist, found the job that several of their employees were doing was dangerous to their health. Of the eight employees who were affected in this area, only two were acknowledged to have been hurt on the job. The others have to suffer through the bureaucratic nightmare of trying to have their cases accepted.

All of these workers in the meantime are regarded as attempting to cheat the system. The workers are forced on to social services and their permanent injuries do not allow them to do most minimum wage jobs. They have applied and are waiting for services of vocational rehabilitation and others have had to continue to use their savings or their spouses' income to survive. These people will be joining those who are already receiving social assistance and working part-time/casual. Without standards, workers end up on the dole.

All this happens while companies get away with asking questions on their application forms which are clearly in violation of the Human Rights Act as it now stands. A collection of these applications is being compiled by a colleague. We know what failure to answer the questions will imply and we also know the result of what answering those questions will be. It's clear to see the long-term outcome of these infractions. As they continue to be overlooked, they will once again become part of the accepted practice.

Our experience with unscrupulous employers has shown us that these employers are willing to bend, mould or even break the law. They believe that they have terrorized their workforce to the point where they are unwilling to demand or even ask for the rights to which they are entitled.

Even very large employers cry poverty and scrimp in as many areas as possible with virtual impunity. Such areas as health and safety are glossed over and downright ignored. Employers no longer have any regard or respect for the people who have made their precious profits possible.

The proposed legislation is clearly flawed and hurriedly put together. The past actions of this government will result in the passing of this bill with the false words of hope that the problem areas will be looked at at a later time. This bill is clearly designed to further marginalize low-end, unorganized and disadvantaged workers while increasing the rights and powers of employers at the expense of the gains made by workers over the past 65 years or more.

The current ultraconservative movement is emboldened by a frightened and destabilized workforce. I've read a fair bit of science fiction in which these very kinds of scenarios play out. I've always thought they were just that, fiction, but as you watch, these conditions are developing. Any kind of security is impossible to attain. Older workers are now those over 40 and are written off as not being worth the cost of retraining.

We have produced a disposable generation of young people. Our parents fought a war to give us a world with hope. Our children grew up expecting to be able to inherit that hope that had been fought for. How many

university and college graduates are now working in minimum wage jobs or just not able to find work at all? We are now faced daily with desperation and anger. People have spent their lives to build a future for themselves only to have it torn away by the new measures. Individual worlds are shattered by consequences over which the individual can have no control. These people are then cast into the heap and regarded as deadbeat drains on our precious society.

As more and more of this frustration bubbles to the surface, rage will increase in all areas of our lives. Families will be in turmoil, violence will become the norm and threats to public officials and clerks in offices, even senior staff, will become commonplace, as well as increased threats towards more public figures. Will we end up with our industrial parks fenced and defended by armed guards? Will the rest of us eventually be stranded in the leftover areas to fend for ourselves? How many of us will be discarded by this society that we have paid with our lives to build? Crime will become one of the few options many of us have to feed ourselves and to care for our families. The real question that needs to be asked here is, what do you really want?

Is there any hope left for the common people of Ontario? How many standards do we need to relinquish? How many more lives should we sacrifice to the ideals of this regime? There is nowhere in any of the new policies or reforms where the government has given any credence to the ultimate human cost.

Communism has failed. The western free enterprise system is on the verge of destroying itself by destroying the people it depends upon. Are the privileged prepared to share what they have or is the selfishness of this segment of the population willing to risk the long-term consequences of these type of measures? The proportion of our population that is poor is growing rapidly and soon numbers alone will turn the tides. History proves that this kind of imbalance will not be tolerated. Free enterprise has become no better than Czar Nicholas or Louis XVI. This society is approaching the same position. Who will lose if this revolution takes place? We should be moving towards protecting the rights of individuals and improving their lives. We hear talk of reducing Third World poverty and saving the children, but we victimize our own citizens.

If you truly want to improve the Employment Standards Act, you must hire sufficient personnel to ensure that non-unionized employees are inspected on a regular basis to avoid violations. The police of this province do it and the tax department does it. Why is this not done for workers where there is an obvious imbalance of power between workers and employers?

Claims will go uncollected by workers who may have no union representation. These people are already suffering from losses in their lives as a result of their own workplace. These workers have already made sacrifices to their jobs only to become victimized by a system that should be protecting them. This legislation will only serve to further this victimization.

If you really want to get workers the money that they are owed, the workers should have the right to become the number one creditor of the employer, as happened

before Bill 7. Workers would receive their pay before any other liabilities are paid.

Fear and frustration are not the answers to the problems of this society. We need to grow towards a future that will be for all people. We cannot afford to abandon our hope and our dreams. We can't accomplish that growth by stalling in the present or trying to return to the past. There are other kinds of science fiction out there, where all people learn to live together in comfort and harmony, where greed and inequality are things of the past. That's the kind of world I want to live in and I think we all do.

The Chair: Thank you very much. That's just over 13 minutes, but that leaves us time for a brief comment or question from each caucus, and this time the questioning will commence with the official opposition.

Mr Hoy: Thank you for your presentation today as it relates to injured workers and other persons who are categorized as vulnerable. Your concern for their well-being is well noted.

I just want to make a comment that in your case 1 example, where you say "that workers who know more than their basic job duties are more than hazardous to the employer," I found that striking and disturbing. It's a worrisome statement.

Ms Poster: This particular employer felt that if the employees were aware of their rights that they were dangerous, especially one particular employee who happened to tell another employee that he was entitled to something. He was subsequently fired.

Mr Hoy: Thank you for your presentation. I appreciate it very much.

Mr Martin: I think this was an excellent presentation and well put together and thought out and delivered. I can't help but reflect on a question that you asked in here, to the government, I'm sure, which is, what do you really want? As we look at the fronts that are open now re the attack on ordinary people today, there's a hearing at the Airline where we're looking at an attack on housing and public housing and rent; the health care system is under great stress at the moment; education, the teachers are up in arms. Everywhere you look, it's more of the same.

1550

I guess the question that really needs to be answered — perhaps you have some thoughts on it further — is, what do they really want?

Ms Poster: What do we want?

Mr Martin: No, what is it that in your mind the government really wants to do here?

Ms Poster: It seems like the government wants to protect a very small portion of the population and the rest of us are, to put it bluntly, to go to hell.

Mr Shea: I appreciated as well your presentation. You obviously spoke with passion and with conviction and that was particularly noted.

Two areas that I'd like to explore just very, very quickly, because I know the time is very brief. You have expressed concern about the way the current economy is moving and you've painted one scenario that I hope never comes about, I hope we all hope it never comes about, but you've painted one possibility. The alter side

of that, perhaps a darker side as well, is something that this government is particularly concerned about and that is the incredible debt that we've been left with, the incredible deficit and debt that this nation, as well as this province, is wrestling with. But when you express concerns about the children, and I particularly relate to that, I'm worried that perhaps we've already squandered their inheritance, if not the grandchildren's inheritance, and I wonder if you would share that concern as well.

Ms Poster: I have a great concern about this but I think the greater problem is that when we have such a destabilized and upset workforce as we have now and there is no job security, there are no jobs out there — myself, when I had to attempt to enter the workforce at 45, forget it. It's garbage. So how can I pay my taxes? If I could pay my taxes and my children had decent jobs and we could all pay our taxes, the debt problem would be a lot less.

Mr Shea: I suspect the Premier and the minister and this government would absolutely agree with that, ybecause in fact its prime objective is to create jobs and get that economy moving. But you go to a second issue here that's of real concern to me and that is one of seniors, not seniors of the age 65 and above, but you've gone quite rightly into the 40s and so forth to show the displacement that's taking place there. As we watch the Canada pension plan about to go belly up, as we watch the unemployment insurance about to go belly up, and so forth, federally, all of them federally, how do we begin to get some kind of stabilization into the national as well as the provincial economy to give some kind of hope for the workers in their 40s and 50s?

Ms Poster: One of the things we have to take a really serious look at is this whole policy of zero inflation that's held by the Bank of Canada. Zero inflation means there's no growth, zero inflation means there are no jobs being created, therefore there can be no stabilization and as long as zero inflation is maintained, we cannot get rid of the debt because there's no mechanism to get rid of it. It's a self-perpetuating —

Mr Shea: The banks are a real problem for us in that the whole Bank Act —

The Chair: Thank you, Mr Shea; I'm sorry to have to cut you off but we have completed our time. Thank you very much for making your presentation before us here today.

CANADIAN UNION OF PUBLIC EMPLOYEES, THUNDER BAY AREA OFFICE

The Chair: That takes us to our next group, the Canadian Union of Public Employees, Thunder Bay area office. Good afternoon. Welcome. Again, we have 15 minutes for you to divide as you see fit.

Mr Howard Matthews: Good afternoon, Mr Chairman and members of the committee. My name's Howard Matthews. I'm a national representative with the Canadian Union of Public Employees located in the Thunder Bay area office. I believe the clerk gave out a copy of our presentation as a CUPE local.

The Employment Standards Act protects the poorest, most defenceless workers from the worst excesses of the most unscrupulous and disgusting bosses. As Moses

Sheppard said earlier, good bosses don't need the Employment Standards Act. They don't abuse their workers. It's the bad bosses that we need the Employment Standards Act for protection from.

Which side is Mr Harris on? The workers' or the bosses'?

When free trade was being debated originally in 1987 and 1988 and again with NAFTA in 1992, the union movement, including CUPE, argued passionately that the inevitable result would be hugely reduced living standards for working people in general, especially the poorest. The Mulroney right wing, including many of the same folks who are now forming this government in Ontario, insisted that this would not happen, in fact claiming that living standards would actually improve.

Now the Harris government is involved in a systematic program of reducing the living standards of working people. Barely one year old, you have already reduced welfare rates by 20%, introduced forced labour for those whom you have cut, slashed the civil service, cut education and health care, increased tuition fees by 20%, contracted out, privatized or asked the private sector to police themselves and gutted the Labour Relations Act. You're intent on selling out, if not giving away, Ontario Hydro, as well as any other government enterprise that can put a profit into the pockets of your corporate cronies. If all of this makes you need a drink, don't worry: You'll be able to get one at the brand-new Ronald McLiquor Mart where the corner store used to be. It's enough to make Brian Mulroney, Ronald Reagan and Margaret Thatcher proud.

A good social contract, a real social contract, is the set of social conditions that, taken all together, makes a stable and peaceful society. A good social contract is one that the vast majority buy into. It does not marginalize large groups. For 50 to 60 years before this government we had a decent social contract in this province. This government is intent on destroying that contract. For what? So we can return to the wonderful world of dog-eat-dog capitalism that we had in the 1930s and that has been alive and well in corporate-dominated Third World countries, creating a banana republic without any bananas.

Now this same crowd is tabling Bill 49, An Act to improve the Employment Standards Act. Improve? Do my eyes deceive me? Gee, has this government really seen the light? No, there's been a typo — darned secretary. She was supposed to type "reduce," not "improve." Doublespeak is alive and well. Then there's that little comment by the minister about this bill being only housekeeping. She actually meant housewrecking, I guess.

In 1975, 21 years ago, Pierre Trudeau told workers that they had to tighten their belts, short-term pain for long-term gain. After 21 years of this BS, belt-strangling, maybe it's time we tried something else. How about a full employment policy with real jobs and fair wages and working conditions, just for a simple example?

Commenting on this bill is a little bit like debating the Marquess of Queensberry rules when your opponent is kicking you in the groin. The simple and not so subtle goal of this bill is to reduce employment standards, to

pick the pockets of the poorest and most defenceless workers. These would be the same folks that you just finished going after with welfare cuts and forced labour.

This is not an amateur heist. We're dealing with pros. The architects of this bill know what they're doing, and I have to wonder where you flew them in from. The Fraser Institute comes to mind when I ask that question. Why pick on the poorest and most defenceless workers? Simple. If you can lower the floor for the poorest workers, it leaves room to lower the standards for those just above them, and then just above them, and so on.

We don't have any illusions when we comment on this bill. We don't expect to convince any Harris government bushwhackers of the error of their ways. Our goal is simply to let you and, hopefully, a few people who care that we know what you are about.

A comment on workfare. It keeps coming up on my word processor that it's not a word. The correct term for workfare is forced labour.

Employers that routinely violate the Employment Standards Act are usually well-off, sophisticated, ruthless and vicious. By contrast, their victims are very often poor, uneducated, unsophisticated and pretty much defenceless by comparison. The labour market is not all it's cracked up to be when you're at the bottom of it. The Employment Standards Act and its policing methods was supposed to even up the stakes a little. It never did succeed in stopping abuse; however, it improved the situation. This act will clearly make that function worse. Now that the government has forced many off welfare out into the bottom of the labour market, and now that these people are stuck at the bottom of the market, it will, with this legislation, make the bottom even worse. If this government truly cared about these people, as it often claims, it would be improving the Employment Standards Act, not gutting it.

1600

Again, who will reap the benefit? The unscrupulous bosses that violate the act, not the good employers. In fact, good employers will not only not benefit by these changes, they may very well be hurt by them if they have unscrupulous competitors. Good bosses often say, "Level the playing field." So it doesn't hurt good bosses to have a decent minimum wage or to have decent employment standards. It's only the bad bosses that want those kind of things.

What does Bill 49 change? You've heard this all day long.

(1) The time for filing a complaint is reduced from two years to six months.

(2) The complaint can go back only for six months versus the present two years, so an employer can rip off a worker for two years and only be liable for six months. And what's the worst that happens when he does get caught? Gee, he has to pay the money that he legally should have been paying in the first place. Horrors. It's almost a darned incentive for bad employers to rip workers off.

(3) The ministry still has two years to investigate a complaint and two more years to get the employer to pay. These are obscene times, yet they remain unchanged.

(4) Get this: The employer's time for appealing has tripled, from 15 days to 45 days.

(5) There's a new \$10,000 cap on claims under the Employment Standards Act. What kind of employer would cheat a worker out of more than \$10,000? Then ask yourself what your interest is in protecting that kind of employer.

(6) The bill also gives the minister the right to set a minimum amount below which a worker will be denied the right to complain. This would be the same minister who's proposing all the other wonderful changes in this bill.

(7) In order to sue an employer for more than \$10,000, a worker has to hire a lawyer to represent them in Ontario Court (General Division). The legal aid plan does not cover employment law. If you can't afford a lawyer, tough.

(8) The avenues for filing a complaint are reduced. Workers must irrevocably decide at the outset whether to claim under the Employment Standards Act or go to court. Unionized workers will not be able to file a complaint at the ministry at all. They will have to file a grievance and ultimately it could cost workers, through their union, thousands of dollars to complete an arbitration.

(9) Instead of strengthening collection procedures, this bill turns it over to the collection agencies. I couldn't believe that the number is 25%, the percentage of moneys owed collected. I've been a union rep for 14 years and actively involved in the movement before that. You want to know my percentage in collecting moneys when employers have been on the wrong side of a grievance? One hundred percent. If they don't pay, we go to court and we get a court order for them to pay, and I've never had to do that because every employer knows you can do it. It would be a simple matter to put court orders in the process for employment standards officers or for the labour board to put in place. Put some teeth in the law and this would end.

To hear a collection agency is now going to come in and raise the collection percentage to 45% is unbelievable. In addition, these collection agencies will have the power to encourage settlements, experts in labour law that they are. What's that going to amount to? They can only go down to 75%. Guess what's going to happen with that 75%, folks. The guy who you heard about a half-hour ago today is going to go up to that poor stiff who's owed \$1,000 by their employer and say: "Gee, I can get you \$750 tomorrow. What do you say? Sign on the dotted line." The person who's broke, guess what they're going to do: They're going to sign on the dotted line. That 75%, there's no negotiating room for people in this situation. It's just going to be a further ripoff of 25% and it's going to get to be almost standard. And the 25% between the 75% the worker gets and the 100% they should have got is going to go into the pockets of the collection agency. So who's really paying the piper?

A comment on unions, because there's such an anti-union atmosphere about this government that it's awful. Here's a comment from Clarence Darrow in 1909:

"With all their faults, trade unions have done more for humanity than any other organization of men that ever existed." Certainly more than the Progressive Conservative Party.

"They have done more for decency, for honesty, for education, for the betterment of the race, for the developing of character in man, than any other association of men."

That's a quote from when unions were fighting for their existence, and it seems like we're back in that kind of fight.

The 10th point I want to make is how this bill relates to unions. Perhaps the most disgusting change in this Bill 49 is the change allowing unionized employers to contract out of the Employment Standards Act. As long as there has been an ESA, there's been a minimum standard regarding the areas it deals with. This is completely normal. For example, you cannot contract with your spouse to waive the assault laws of the province. If you assault your spouse it's assault, whether they want to complain or not. It is a fundamental principle of our legal traditions that is being tossed out with this one.

This bill allows employers and unions to agree to lower standards. What union would agree to lower standards than even those in the Employment Standards Act, you might ask? The answer is obvious. The weakest and most vulnerable ones. But then there is nothing new about this government attacking the weakest and most vulnerable. What employers would propose lower standards than the ESA? Again, the answer is obvious: the most ruthless and vicious.

Even without this law change, I am seeing proposals at the bargaining table, with smaller and weaker bargaining units, to eliminate hours-of-work provisions and increase overtime qualifying to 44 hours, something that disappeared from union contracts 40 or 50 years ago.

This change will increase tension and disputes at the table. It harms, not helps, the labour relations climate. Why do it, then? The purpose is obvious — to convince non-unionized, marginalized workers that they may not gain and could actually lose by unionizing.

"Power concedes nothing without a demand. It never did, and it never will. Find out just what people will submit to you and you have found out the exact amount of injustice and wrong which will be imposed upon them; and these will continue till they have resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they suppress." That's a quote from Frederick Douglass from the mid-1850s.

All in all, this bill is not a bad day's work for the gang that makes Dalton Camp look like a socialist. How many days to the next election? Is it really over 1,000? Have you really only been in office 400 days? Oh well, it'll be worth the wait just to see Mike and Brian on the golf course together trying to figure out what went wrong.

The Chair: Thank you. That leaves us one minute, so just a very brief comment from each caucus, commencing with the third party.

Mr Martin: Thank you for the presentation. It's good, if for no other reason than to hear folks from the ranks of organized labour come forward and talk about how important organized labour is and the contribution it makes to common decency and fairness in the workplaces, not just unionized workplaces but all workplaces across the province, and to warn us what we're going to

lose if we continue to move in the direction that this bill and other bills have suggested we are heading.

I'm not sure what we can do. I'm like you. I'm beside myself. I'll certainly do my job and raise the issues and make sure that people know about it. I share your concern. Just this morning I asked the committee if they wouldn't recommend to the government that we withdraw this bill. Everybody who's come before us today, except for a couple, has suggested, and very eloquently and logically, why the bill isn't going to be helpful to Ontario.

I'm suggesting that we withdraw it and get on with creating the 750,000 jobs you promised in the election campaign. That would be much better. That would create a better climate, would help people and go a long ways to making Ontario a place that's decent and affordable, and we could pay down the debt and do all kinds of good things. What else can we do?

Mr Matthews: That's absolutely what ought to be done with this bill. You ask what else we can do. The question came up earlier, what about the huge public debt? I make a comment in this brief that these kinds of restraint policies go back 21 years now. This idea of belt-tightening started in 1975 and has continued virtually unabated. The attack on working conditions, wages — you name it — interest rates, all those things, restraint economic policies, have been followed year after year after year for 21 years.

1610

In 1975 we had no public debt. After 21 years of these kinds of policies that you want to continue to pursue, we've got a massive public debt and it came about because — it would take a lot longer to discuss it —

Interjection.

Mr Matthews: That's absolutely false. The most right-wing government I've ever seen except the last NDP government, quite frankly.

Mr Ron Johnson: Thank you for your presentation. I guess I'm one of those you called a Harris government bushwhacker. I'm a bushwhacker with a question, though. You started your presentation talking about your union's stance against the free trade agreement and you say in here you argued that it would inevitably result in fewer jobs and have a negative impact on those in Canada. Your argument at the time, and I happen to remember it very clearly, was that the cheaper labour force down there and free trade would open up the floodgates for jobs moving south. Yet not half an hour ago we had a Ms Judith Mongrain, also with your union, a president of one of your locals, saying very clearly — and speaking on behalf of the local, I might add — that she would like to see an increased minimum wage, which by your union's own definition would create even more of a disparity and drive even more jobs south.

I guess I've got to ask you, you can't have it both ways; which way are you going to have it? Were you telling us what you thought back in 1987-88 or are you telling us what you think now?

Mr Matthews: I think you weren't listening to Ms Mongrain's answer. She made the point that predominantly the jobs that are paying minimum wage are jobs at McDonald's or Burger King or throughout the service

sector. Those jobs aren't going anywhere if we raise the minimum wage. Those jobs are going to stay right here.

Mr Ron Johnson: Or they'll disappear entirely.

Mr Matthews: I don't think McDonald's is going anywhere, with all due respect.

Mr Ron Johnson: Can I ask you, though, which is it going to be?

Mr Matthews: The kinds of jobs that you want to keep here, though, are in the manufacturing sector, those types of jobs, and those are the jobs we're losing. Those aren't minimum-wage jobs.

Mr Ron Johnson: What should it be?

Mr Matthews: You have to maintain some control over the economy. You can't throw it open to the market forces. That's exactly what free trade does. It says, "The market is the answer to all of our prayers." That's what got us into the Depression of the 1930s and that, as sure as I'm sitting here, is going to get us into the depression of the late 1990s and the next millennium.

Mr Ron Johnson: That's socialism. So what should it be? What should the minimum —

Mr Matthews: It isn't socialism; it's a mixture —

The Chair: Thank you very much for taking the time to appear before us this afternoon.

CANADIAN EMPLOYMENT AND IMMIGRATION UNION, PSAC LOCAL 623

The Chair: That leads us to the Canadian Employment and Immigration Union, PSAC Local 623. Good afternoon to you both. We have 15 minutes for you to allocate as you see fit between presentation or questions and answers. Welcome to the committee.

Ms Sarah Williamson: Good afternoon, members of the panel and fellow citizens of Thunder Bay, mainly brothers and sisters of unions. My name is Sarah Williamson. I am a federal worker and I am here to speak on behalf of my union, Local 623 of the Canada Employment and Immigration Union, which is a component of the Public Service Alliance of Canada, which is commonly called PSAC.

You may wonder why we as federal workers should care about the dilution of the Employment Standards Act. It will affect us. Many of us are going to have to follow our jobs because they're being transferred to the province or to private sector. Some of our jobs are simply being surplusted. As a result, many members have to find new jobs outside the federal service.

But it's not only for our own working conditions that we're concerned. Our members who work in employment services at the human resource centre hear from vulnerable clients about the kinds of hours and other conditions that some of the bad bosses demand of them.

Our children and our friends' children are entering the workforce, many starting at low-paid jobs. We want our children to have a future. We want a province that cares under what conditions goods and services are provided. The present employment standards legislation is a cornerstone that must not be eroded. Employers and workers who have decent working agreements may have begun to assume that no employer mistreats workers, so I've asked a young man, Noah Jackson, to be part of our

presentation so he can tell you directly what is happening in the job world for youth and where he sees employment standards coming into play.

Mr Noah Jackson: Good afternoon. I'd like to thank everybody for giving me an opportunity to speak. I'm very nervous, so please bear with me. I'm not a very good public speaker, but I'm here to try to do what I can to help you guys make your decision. I've written a speech. I didn't realize that I was supposed to provide it for everybody so, once again, if you have any questions at the end of it all, there's going to be a period in which you can ask me to go back and restate anything that I might have already mentioned.

The goal of labour laws is to equalize the bargaining power between employers and employees. These laws have been instituted in an effort to reduce the rift between these two groups and protect both parties from unfair persecution. I'm not specifically on the side of employers or employees. I'm an employer myself and I understand that everybody has rights and all these rights must be protected. That's why I think these proposed changes are going to definitely swing things in unbalanced favour towards the employer. It just provides for exploitation.

In an ideal society, these laws would be unnecessary of course. If this were Utopia, everybody's moral infrastructure would just not allow these types of unfair occurrences to happen. Unfortunately, as luck would have it our efforts in constructing this infallible society have been in vain. That is why the government, you individuals who I've elected and my tax dollars help to pay — it is your responsibility to address the issues that I'd like to bring up here.

The government has a responsibility to protect its citizens. Labour laws were constructed to operate as a workforce regulator, balancing the need to protect the employee and the necessity of holding the employer responsible for his or her actions. Historically, Canada's present labour laws have presented perhaps the most equitable national workplace in the world. This is not a statistic to be taken lightly. Besides the economic benefits of protecting the employee from exploitation, Canadians feel safe in their work environment knowing that their government will shield them from being treated in a discriminatory fashion. This feeling of safety contributes to the overall morale of our country's workers, and that high level of morality leads to employee productivity. No employer in the world wants to see his employee operate unproductively. That's why we pay them to be there. So I think the reduction and allowing bad employers to exploit their employees is only going to come back and bite them in the butt. But they can learn that the hard way, right?

The delicate balance of employee responsibility and employer accountability should be preserved in the best interests of all Canadians; however, my opinions on this matter were not founded solely on my philosophical principles but on real-life experiences, both personal and within my group of peers. I have collected and prepared examples of a number of specific incidents in order to help illustrate my point. I feel optimistic that my accounts of these occurrences will help to convey the need for

legislative reform, but not in the direction that these proposals indicate.

My first example will be personal. When I was 18, I was employed by a large chain of convenience stores. I did everything within my capabilities to perform the best job possible, because I've always liked hard work. As a part-time employee and the person with the least experience, I accepted having all the bad shifts and stuff like that, having to end up working nights. Unfortunately, a lot of the shifts I received conflicted with my school schedule. I frequently indicated to my supervisors that I was unable to work during these time slots.

However, with each new schedule, I discovered that my efforts to alert my supervisors of this conflict of obligations was met with little regard. I was consistently scheduled to work during hours when I was unavailable due to my school schedule. With great difficulty I managed to balance both affairs and structure my time so that I could fulfil both my educational and professional requirements. But I didn't have to do that for very long. After three months, at the regularly scheduled evaluation date, I was dismissed for failing to meet the requirements of the position. Not only I was shocked at this development but also my co-workers, who felt that my performance was very estimable.

I reluctantly accepted my fate and began to search for a new job. After four days I received a phone call from an employee from another branch who had also been fired from her position. She informed me that 11 employees throughout the region, Thunder Bay, had been relieved and that their dismissal stemmed from inventory shortages as opposed to lack of performance. Historically, there had been a very serious problem. Because it was such a large corporation, all the inventory was computer-managed and there was consistently a deficit. Nobody knew where any of this inventory was going.

These shortages were somewhere in the range of \$10,000 per month, and of course that is beyond what any employee, I believe, can steal, even if he's one of the best, especially in a 7 Eleven. It was apparent that these shortages had arisen from a problem other than employee theft. However, the corporation required a group of scapegoats, and I was chosen because I was a relatively new addition to the company. Many of the other employees filed grievances against the corporation. In a great number of instances, the employee prevailed, thanks to the assistance of the government. Thank you. I chose not to pursue the case solely because I had already found a more profitable position.

1620

Some months later the same corporation fired an employee at another branch for having been the clerk on during two separate robberies. In both instances, the guilty persons were caught and there was never a link established between the individual and the people who committed the robbery. However, once again, they didn't see it that way, and they chose to release him.

If, even with the present penalties being enforced by the government, it can't stop employers from exploiting employees, I don't understand how declawing the act is going to help anybody.

Another example of the lack of government control over these types of occurrences can be exemplified in an

incident involving an associate of mine. She was employed by a chain of female clothing stores. During the four months that she was employed there, she performed very admirably. She won a great number of sales awards and received commissions and bonuses at a rate higher than anyone else in the store.

Due to an outstanding physical ailment of which the employer was aware when she was hired, she was scheduled for surgery to repair her dislocated shoulder. She notified the company three months in advance of her operation and explained that she would be unable to perform her job for three months during the rehabilitation process. Her supervisors indicated that they understood the need for her surgery and said that once her rehabilitation was complete, they would again solicit her services.

However, after two and a half months she completed recovery ahead of time and informed her supervisor that she would like to come back to work. She never again received a shift. After two months of being put off and her request to come back being ignored, she submitted. She gave in. I advised her to contact her lawyer, and she indicated that she had already advised her employers she was going to pursue legal action and they laughed at her threats. They told her that if she pursued it, they would simply contrive a falsified conduct report and use it to dismiss her. Their threats daunted her, and she gave up trying to pursue the issue. They just simply weren't afraid. They didn't care.

If the government can't enforce all these regulations, then it might as well declaw the act because it's just going to save it a whole lot of money. If it doesn't work now, why not just rip it all apart, save yourselves a few bucks?

In an era when corporate downsizing is a daily practice, employees need to be protected from exploitation. The proposed abridgements to the Employment Standards Act will serve as a tool by which employer accountability will be diminished, and thus it serves almost as an incentive package for employers to ignore the rights of their staff. Declawing the Employment Standards Act is comparable to trying to discipline a child without actually punishing him or a former criminal without imprisoning him. It's an exercise in futility.

The Chair: Thank you very much. That leaves us a minute and a half per caucus. This time the questioning will commence with the government.

Mr O'Toole: It's a real pleasure to see a young person like you come forward and make a statement about how you see things evolving. I hope you've had an opportunity to hear or read some of the other presentations and see the balance, that really ultimately the current system, and I think you referenced it, isn't working.

Anyone that's read it, and I think you've cited a couple of examples — very sensitively, I might add — it isn't working, we're not collecting the money. Many of the standards aren't properly enforced because they're old, very hard to — would you support that there need to be sensitive changes to the Employment Standards Act; as young people looking forward to a future, that we have to make changes? There are home workers now. There are people working from their computers at home. The world of work is changing. In your world of work, there

are no more major corporations emerging. It's going to be small business entrepreneurs like you. Don't you think we need to look at this?

Mr Jackson: Absolutely. I'm a big advocate for all types of legislative reforms, not solely in the employment and industry sections but also in a great number of areas. I think the most important thing to understand is that there needs to be a great deal of flexibility. The world is expanding so quickly and markets are popping up and going back under the surface so quickly that what we need to do is develop a flexible and radical approach in order to protect the youth of today.

Mr O'Toole: I agree. If you look at some of the provisions in clause 3 — and there's going to be a two-part series; I would encourage you to participate in that process. But the unions themselves in the particular workplaces are probably the most important people, and the workers they represent and the operators of the business. They may have to work at seasonable adjustments, they may have to work at demand levels in inventory adjustments, while at the same time looking at long-term security and stability. So it isn't the same in Thunder Bay as it is in Toronto, as it is in Timmins, and what this act is trying to do is say, "All solutions in Toronto don't apply in Thunder Bay and Timmins." We need the flexibility, as you said, and that's exactly what this bill is trying to do.

Mr Jackson: I agree with half of that but not all of it. I believe that with the increases in technology in regard to communications and information, I don't think there's really any sector that can't survive at any geographical point. I don't believe there's really a whole lot of difference in the economic infrastructure. I think in certain situations like that, where it deals with natural resources, there might be predominantly a certain industry, and I won't ignore the fact that of course not every town is going to be a clone; some towns are going to do things their way. But I disagree with the fact that certain sectors should be more protected than others just because of their geographical location, because it's really not difficult, no matter where you come from, to succeed in whatever industry you want to pursue.

Mr Hoy: Thank you for your presentation. You discussed many of the things that students go through in their early employment years: part-time, shift work, late nights, some go late nights and then back early morning and don't work through the middle part of the day, and of course many of them work for minimum wage. So you've touched on a number of things, and I appreciated hearing about your concerns and your experiences.

If we are going to try to protect the vulnerable people of Ontario, and we should, the act would have to be, in my mind, designed to fit all of Ontario. I don't think we can regionalize or even think of saying that someone in a certain location of Ontario is more or less vulnerable than someone else. So the act has got to be put in place. A protection side of the act has to fit all of Ontario.

You're a very articulate individual and you did well here today. We appreciate hearing from you.

Mr Martin: As others have said, it's good that you brought your partner with you here today to share with us some of what he's experiencing and how it relates to

your concern about your own future and the future for your children and the members of your organization and their children as they look ahead at, hopefully, the prospect of a job and taking care of themselves. Regardless of who we are here, we want a better economy, and we each take a different approach to that.

Some of us believe that you develop an economy by a mix of private and public, government protecting and making sure that there are level playing fields and that there's fairness in the system. Others will suggest, as I suggest this present government is proposing, we create a better economy by minimizing the number of regulations and getting rid of government, getting government out of the face of business and creating a freer marketplace.

I guess that's the \$1-million question: Is this going to work, or will this experiment that we're going through now have us, five or 10 years down the road, shaking our heads saying, "Holy mackerel, what have we done?" That's what I'm asking you now. What's your sense of all that?

Mr Jackson: I don't believe that these changes in legislation will benefit anybody in the long run. In the short term, perhaps an employer will benefit because he'll be given a greater opportunity to exploit his employees. But, unfortunately, for every action there is an opposite and equal reaction, and there is going to be a backlash.

Of course, like I said, I do believe in these legislative reforms. Unfortunately, I just think they're moving in the wrong direction. If employers right now ignore the penalties that are presently in effect, I don't understand how these proposed changes are going to benefit anybody but the people who already exploit the community.

The Chair: Thank you both for taking the time to make a presentation before us here today. We appreciate it.

1630

ONTARIO PUBLIC SCHOOL TEACHERS' FEDERATION, THUNDER BAY DISTRICT

The Chair: That takes us to our last group of the afternoon, the Ontario Public School Teachers' Federation, Thunder Bay district. Good afternoon, Mr Green.

Mr Jim Green: I'm Jim Green, district president of the Ontario Public School Teachers' Federation, and I'm here to tell you this legislation is a crock. I am so distressed, so angry, so upset that I'm going to have to constrain myself by reading rather than telling it as it is.

The introduction of this bill as housekeeping amendments to make the Ontario legislation similar to other provinces is misleading. This bill is another in a series of anti-worker, pro-employer actions of this government. This legislation will adversely affect all three groups of workers: unionized, non-unionized and those in the process of unionizing. The government missed no workers.

Ontario is rapidly degenerating, and I use that word advisedly, into a place where the government will help the rich control more and more of the wealth of the province, while at the same time sentencing the workers of Ontario to exploitation, degradation and poverty. This bill will fundamentally alter the entire concept of mini-

imum wage and employment standards. The bill also proposes radical changes to the way workers' rights will be enforced in Ontario. The changes will clearly benefit employers and reduce or eliminate an employee's ability to require just treatment from his or her employer.

An employee without the benefit of a union will, in most cases, be unable to secure reasonable redress from a transgressing employer. Many employers will treat their employees in a fair and humane fashion, regardless of the economics of the times or the presence or absence of legislation. Legislation was never required to control these employers. However, at a time when jobs are few and the unemployed are many, this bill will make it tempting for unscrupulous employers to cheat their employees and difficult or impossible for employees to obtain justice.

The legislation will affect unionized labour, in that protections that were provisions of the law for decades in Ontario and so were never written into collective agreements, will be gone. The unions will thus be unable to defend their members from many inequities imposed by their employers.

This legislation will weigh the scales of justice so hard in favour of employers that the individual employee will have no chance of budging them in the direction of fair treatment. Even smaller unions will rapidly exhaust their funds trying to balance these scales weighted so heavily against their members.

The current provisions of the act do not provide an Ontario worker with even the basics for a decent living. The act, however, does provide protection from exploitive employers who would deprive workers of their rightful public holidays and vacation pay, who would rob employees of their rightful overtime, and then fire them without severance pay if they dared to complain. The proposed changes will remove these protections by allowing employers to provide equivalent packages.

Since the various provisions have the potential for vastly different values for every employee, the danger is that employers will value the provisions to be cut at the lowest value for any worker and the enhanced provisions at the maximum for any worker, thus resulting in significant losses for all employees. A non-union employee without a collective agreement will be greatly disadvantaged in this dispute and few, if any, will be able to achieve equity because of their dependence on the employers' largess for their livelihood, regardless of how meagre it may be.

For any employee with a collective agreement, current legislated rights not enshrined in the collective agreement could be rescinded with the new act, and employees will, in many circumstances, be met with an argument that the collective agreement provides greater benefits as a whole and that as a result the minimum legislative protections do not apply.

The terminated employee could find that the employer claimed exemption from the severance provisions of the act because hard-won provisions for holiday and vacation pay exceeded the minimum requirements of the act. The current high unemployment has created a significant inequality of power between employees and employers, including unionized workers, and therefore detrimental

tradeoffs will be agreed to in many instances, or significant labour strife will result as employees try to bargain back the rights removed by the legislation.

This legislation will allow an employer to carry the unacceptable tactics of the childhood playground bully forward into the workplace. With no help available from the law and little chance of unionizing, small service and retail establishments will become employment ghettos. Larger non-union employers in these same sectors will be able to arbitrarily change employee entitlements to maximize employer profits.

It would appear possible for an employer whose employees were being organized, or who as a group were merely asking for improvements, to reduce the number of hours required to receive overtime pay in a week maybe to 36 hours, even though no one ever worked more than 35, and then eliminate all severance provisions. This could allow the employer to discharge any employee involved in unionizing or even asking for a raise or other improvement, without the employer being required to pay any severance allowance.

The reduced enforcement provision of the act would probably prevent the non-unionized employee from even seeking full redress or receiving employment insurance if the employer claimed just cause for the dismissal. In the above cases, non-unionized employees will be restricted to filing a case either for wrongful dismissal or for a failure to comply with minimum standards, but not both, even though they were shafted twice. Even if the employee wins a wrongful dismissal case, the wage order cannot exceed \$10,000; or if the amount is less than an as-yet-unstated minimum, the employee could receive nothing.

As an added bonus for an unscrupulous employer who provides a package that, when taken together, is less than the required minimum is the provision that restricts the employer's liability to six months rather than the current two years. In other words, an employer can cheat his employees, risking only six months of ill-gotten gains, a definite incentive for exploitive employers, especially those whose employees have little fluency with the language or who are not well acquainted with their rights, albeit greatly diminished, under this legislation.

Another devastating possibility is that an employer could withhold the minimum amount, not yet stated of course, under the legislation from each employee every six months and be subject to no administrative action, a veritable bonanza for the unscrupulous employer.

The enforcement provisions of the proposed changes to the act will adversely affect unions and their members. Currently all employees in Ontario may receive assistance in investigating and prosecuting a claim from an employment standards officer. These officers have extensive powers to inexpensively pursue a claim and issue remedial orders. The proposals under consideration will basically eliminate this right for union members.

This will effectively transfer the cost of pursuing employee rights from the government, where it rightfully belongs, to the employee, through his or her union dues. Since the union will not have the investigative powers of the employment standards officer, union members will in many cases not receive fair treatment, and where they do,

it will only be after a lengthy and costly intervention by the union.

The amendments, if passed, could cause unions to be responsible for pursuing employment standards claims as part of their duty for fair representation. Unions could be required to defend their actions in Employment Standards Act cases, even though the union personnel do not have the knowledge or the training to deal with such issues. Since employees are bound by the decisions of the union in these cases, employers could require unions to abandon outstanding claims for violations of the act as part of a new collective agreement. This would appear to force unions to spend significant sums to train personnel to deal with this legislation, be forced to abandon claims by unscrupulous employers and still be liable for the employee's entitlements. In other words, the union could end up paying what the employer should have, another bonanza for the unscrupulous employer.

1640

The final irony of the act is the government opting out of collecting. The act provides that the employment standards director can authorize a private collector to pursue a claim for a worker and then the director will apportion the amount collected among collector, government and the residual to the employee. In other words, workers who have been grievously treated by employers and who are in desperate need of funds to survive could have their rightful claim — it could be \$20,000 or \$30,000 — first restricted to \$10,000 and then have that reduced by a collection fee and a government administrative fee.

This provision will undoubtedly lead to employees getting considerably smaller settlements. Collectors will be inclined to recommend settling for less than the full amount to expedite settlements. After all, they're just in the money-making business, not in dealing with employee problems. The collector will still be paid, and the unscrupulous employer will get off more cheaply — not much of a disincentive to the employer and certainly not fair treatment to the employee.

I ask, as I've heard from the other side of the table over to my right, that you strike down this legislation and restore a semblance of balance to the employer-employee relations in Ontario. Thank you.

The Chair: That leaves us just one minute per caucus for questioning, this time commencing with the official opposition.

Mr Hoy: Thank you for being here this afternoon. I enjoyed hearing your comments. You opened by talking about unionized employees, unorganized employees, and then you talked about those who will be making decisions because of this bill, whether they want to be unionized or remain unorganized. That's an added feature to the decision of whether you want to be organized or not, that an employment standards bill would have cause to make up your mind whether you want to be organized or not, and it's outside of what probably most people would be considering when they decide upon unionization or not.

In regard to the \$10,000 limit you mentioned in your brief, the government has stated that 96% of claims are under \$10,000. The other suggestion was that it was executive types or those with high incomes who generally

are claiming over \$10,000. But I also want to let you know that we've had significant numbers of presentations that suggest that those people who are making smaller amounts of money, minimum wage or somewhat above that, are in that 4% of claims area too, and that's something we're going to have consider when the government proposes this limiting at both ends, minimums and maximums. When you start drawing lines, it causes great problems, and I appreciate your concerns this afternoon.

Mr Green: Thank you, and it's only fair to say that it doesn't matter how much you make; you should be treated fairly.

Mr Martin: I want to thank you as well for coming before us today, for taking time out of what I'm sure is a very busy schedule, given that you're working on another front under attack by this government, the whole question of the quality of education in the province and what has been contributed there and some of what is being taken away. It's good that you've come today to share with us your thoughts on this very important piece of legislation, which I think is part of a larger affront to poor people, vulnerable people, working people across this province, unionized and non-unionized.

I think you make some really important points, not the least of which is that this piece of legislation is in the interests of what's often referred to as the bad boss. We have good employers out there across this province in every community who know that it's in their best interests to treat their employees well, to make sure they're safe and healthy, that they come to work happy every day and that they have some sense of stability in their job situation. Those kinds of employers are not the people clamouring for this kind of change. It's the employer who is looking for a little edge, looking for a way to shortcut a corner or whatever, who's being served here, so I think it's good that you've come and shared that with us today.

You referenced a few minutes ago that you think the government should just withdraw this bill and get on with the business of stimulating the economy, "creating the 750,000 jobs that you suggested you would create during the election," which would go a long way to solving a whole lot of the problems that we're confronting right now. Is there anything else that you'd like to add in advice to these guys? Because you're the last one they're going to hear today.

Mr Green: I reiterate, we're looking at the playground bully. Unfortunately, the playground bully we're dealing with right now is the government.

Mr Baird: Thank you very much for your presentation. I think there is certainly room for reasonable people to disagree on public policy issues. Our different parties from time to time disagree with different legislation and I think that's an important part of our democracy, but I think it's important we debate things on the facts. A good number of things you've said just simply aren't in the bill, and it causes me great concern.

You mentioned as an example specifically relating to this bill that an employee discharged for trying to start a union would get no termination pay under this bill. Let me tell you, there's absolutely nothing in this bill that affects that whatsoever. In our Bill 7, one of the first

laws this government passed, we made as the only single exception during a unionizing drive that where there's no vote, if an employee is fired, if there is retribution by the employer, he can go right to the Ontario Labour Relations Board and they'll grant certification without a vote, because we treat that issue simply that seriously. I don't know where you find that in the bill. It's amazing to me.

The second issue is with respect to the apportionment of the fees. The employer will pay the administration costs associated with collecting an order. The fee from the collection agent is added directly to the order to pay,

so if you're ordered to pay \$100 and the fee is 20%, you owe \$120 now and 100% of the apportionment would go to the worker. That's very important to get on the record. I could go on, but I guess my time is up.

The Chair: Thank you, Mr Green, for appearing before us here this afternoon. We appreciate it. That concludes our hearing here in Thunder Bay. Thanks to all who presented and thanks to all who came to witness. This committee stands recessed until 9:30 tomorrow morning in Sault Ste Marie.

The committee adjourned at 1647.

CONTENTS

Monday 26 August 1996

Employment Standards Improvement Act, 1996, Bill 49, Mrs Witmer / Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, M^{me} Witmer	R-1129
Thunder Bay Chamber of Commerce	R-1129
Service Employees International Union, Local 268	R-1131
FMB Labour Adjustment Services	R-1134
Northwestern Ontario Associated Chambers of Commerce	R-1137
Service Employees International Union, Regional Office	R-1139
Kinna-Aweya Legal Clinic	R-1142
Transportation and Communications International Union, Allied Services and Grain Division	R-1144
Construction Association of Thunder Bay	R-1146
New Directions Workers Resource Centre	R-1148
Thunder Bay Coalition Against Poverty	R-1150
Thunder Bay and District Labour Council	R-1154
Northwestern Ontario Steelworkers Area Council	R-1156
Credit Bureaus of Northwestern Ontario Ltd	R-1158
Canadian Union of Public Employees, Local 87	R-1160
Thunder Bay and District Injured Workers' Support Group	R-1162
Canadian Union of Public Employees, Thunder Bay area office	R-1165
Canadian Employment and Immigration Union, PSAC Local 623	R-1168
Ontario Public School Teachers' Federation, Thunder Bay district	R-1170

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 Mr Bill Grimm (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC) for Mr Tascona
 Mr Ron Johnson (Brantford PC) for Mrs Fisher
 Mr Tony Martin (Sault Ste Marie ND) for Mr Christopherson
 Mr John R. O'Toole (Durham East / -Est PC) for Mr Carroll
 Mr Derwyn Shea (High Park-Swansea PC) for Mr Maves

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R-26

R-26

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Journal des débats (Hansard)

Mardi 27 août 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



Chair: Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Tuesday 27 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mardi 27 août 1996

The committee met at 0930 in the Ramada Inn, Sault Ste Marie.

EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

SAULT STE MARIE CHAMBER OF COMMERCE

The Chair (Mr Steve Gilchrist): Good morning. I call the meeting to order on this, our seventh day of hearings on Bill 49, An Act to improve the Employment Standards Act. On behalf of the committee, we're certainly pleased to be here in Sault Ste Marie today, our second stop in the north.

Our first group up this morning is the Sault Ste Marie Chamber of Commerce. Good morning, gentlemen. Just as a reminder, we have 30 minutes for you to divide as you see fit between presentation time or questions and answers. I wonder if you'd be kind enough to introduce yourselves for the Hansard reporter, please.

Mr Gene Nori: Mr Chairman, honourable members, welcome to Sault Ste Marie on behalf of the chamber, who are present here today. We welcome you to the Naturally Gifted City of the North and hope your stay will be a pleasant one.

My name is Gene Nori. I'm the general manager of the chamber of commerce. I'd like to introduce to you Mr Jody Curran, who's the president of the chamber, and Mr Gord Acton, who is a director of the chamber. Unfortunately, John Reynolds, who is on the itinerary, is unable to make it because he was called out of town.

I would like to call on Mr Curran to start us off.

Mr Jody Curran: My name is Jody Curran. I'm president of the chamber of commerce. Mr Chairman, honourable members, the Sault Ste Marie Chamber of Commerce is a business organization representing approximately 700 employers in and around Sault Ste Marie. The members of the chamber represent small, medium and large enterprises employing unionized and non-unionized workers.

The Sault Ste Marie Chamber of Commerce welcomes this opportunity to address the standing committee regarding Bill 49, which proposes changes to the employment standards legislation. I'd like to turn the rest of the presentation over to Gord Acton, one of our directors.

Mr Gord Acton: Thank you, and good morning. The Sault Ste Marie chamber, first of all, believes this is a

beneficial reform of the act. The act has somewhat aged. It's been developed in a piecemeal fashion. There have been many exemptions, many amendments to the bill such that it is not very user-friendly, and we think a wholesale amendment to the bill is needed and is welcomed. We're happy to see these committee hearings take place; we're happy to be able to present our views and we support the efforts in terms of a wholesale revision.

Second, we think one of the aims, in trying to take the dispute mechanism out of public hands and more to the parties' hands, is a worthwhile endeavour and we support that. We think there are well-trained contract administrators, employee representatives, business administrators who are better able to solve many of these disputes than having standards officers involved, and they can do it quicker and cheaper.

The goals of Bill 49, namely, to enable the Ministry of Labour to administer the act in a more efficient manner, to promote self-reliance and flexibilities among the workplace parties and to simplify and improve the act's language therefore are supported by the chamber, and we believe they can be accomplished in this two-step reform.

However, the chamber also believes and supports the continuing protection of minimum employment standards for workers, and we hope you receive this brief in the manner in which it is delivered. We do not think it's a radical support of this bill. We think it's balanced and we think it's a thoughtful approach to it. We're not simply saying everything that is being proposed is perfect, but we are saying that we're supporting the aims and the general thrust, with some things for your consideration.

In terms of minimum employment standards, section 12 of the bill enhances the current minimum standards by allowing for the accrual of rights during pregnancy or parental leave. This ultimately will mean a higher cost to employers, as all rights in employment contracts that are service-driven will continue to accrue during such leave. That being so, we support it. We believe our members will support it and will adopt it and follow it.

Similarly, the amendments proposed in respect of vacations will mean that employers who have dealt with this benefit by way of pay in lieu will now have to pay and schedule the vacation time, or provide vacation time with pay. This will have a direct impact on those employers hiring casual employees, as the proposed amendments enhance the vacation benefit. Similarly, we support it. There are some employers in the workplace who currently offer this, but not everyone does. Not all employees have this benefit.

The duplicate routes of proceeding, limitations, and appeal periods, we have looked at. The chamber of commerce supports the provisions of Bill 49 which will

prohibit an employee from commencing a wrongful dismissal action in court if he or she files a complaint claiming termination or severance pay under the act. Similarly, where the employee files a complaint under the act for wages owing, breach of the building services sector provisions or the benefit provisions of the act, then a civil action by the same employee seeking remedy for the same complaint is prohibited. The vice versa is true. We believe there have been duplicitous, costly and expensive proceedings and you get into almost a legal blackmail situation in some situations, which should be eliminated or reduced by these provisions. The amendments would require an employee to choose whether to pursue the matter through the court system or through the act, which will bring an efficiency in time and expense to the resolution of disputes.

We also believe that limiting the entitlement to recover money under the act to six months instead of the current two years ensures that the complaints are made in a timely manner by employees so that the evidence is not lost due to the passage of time or, if the complaint is pursuant to the act, allow the matter to be investigated while all the evidence is still fresh. A quicker investigation and assessment of complaints or actions will usually mean a more rapid settlement of issues, which generally benefits the working environment and provides for a much happier and dispute-free workplace.

The proposed change to increase the time limit to appeal the employment standards officers' orders from 15 to 40 days also shall allow both parties to negotiate a settlement in lieu of an appeal or more fully consider the merits of filing an appeal. Alternatively, that 45-day limit will allow the necessary payment of the amount ordered, including administration costs, to the director in order to apply for the appeal. This particularly is applicable to our smaller member employers, where the current 15-day period in which to make payment causes a hardship.

The chamber believes there are other issues that you may wish to consider and that we would encourage you to consider in the current amendments. Arbitrators, under Bill 49, are given the power to make the same types of order that an employment standards officer is able to make. Therefore, should there not be an enhancement of the guarantee of qualifications of arbitrators and a clarification of the arbitrator's powers? Employment standards officers, as you know, have the power to investigate complaints, require production of documents for inspection and to make inquiries of any person relevant to the investigation. If an arbitrator now has these powers, he will have the power to act not only as an investigator, but also then as an independent judge. That is a trend which is much different than our usual adversarial traditions. It is more in line with some of the civil law courts that we see in countries like France, and arbitrators to date have not really been trained to conduct an investigative process. They are trained as independent judges, or hopefully trained as independent judges.

0940

The chamber recommends that the grievance procedure ought to take the place of the investigative role which possibly the arbitrator now has under the amendments in order that the arbitrator hears the case in an unbiased

manner. To do otherwise would mean that he would investigate, possibly form an opinion and then sit as a judge with a particular bias. Our history has been that the judge comes to the table, comes to hear the disputes as presented by the parties, in an unbiased way.

Further, arbitrators are being asked to interpret legislation, and the parties should be assured that those arbitrators on the panel are qualified for such a task. This reduces arbitrator shopping, which is an ongoing and well-known process, and will enhance a quicker settlement and a quick selection of an arbitrator to hear the case.

The new powers proposed to be granted to arbitrators also well relate to the ability of an arbitrator to make related employer declarations. However, the provisions of the act with respect to "related employer" are unclear and need amendment. It's suggested that these provisions should not be enforceable by an arbitrator until such provisions are clarified, because to do otherwise would unnecessarily complicate and lengthen the hearing process.

In an appeal or review of an arbitration decision, it should be clarified whether the arbitrator's order can be appealed to an adjudicator or a referee, given that an arbitrator can make any order which an employment standards officer can make and such an officer's order is appealable to an adjudicator or referee.

Second, with respect to time lines, all collective agreements currently have time lines in which grievances must be filed and processed, and these time lines are in most cases different from the act or the proposed act.

The chamber believes that the collective agreement time lines which are negotiated freely by the parties should prevail, in particular as grievances may be filed which allege both violations of the act and violations of the collective agreement. In such a case, consistent time limits would be imperative or, as the chamber would propose, the time lines provided for in the collective agreement would prevail.

Third, is the arbitrator's ability to award damages restricted by the six-month recovery limit? We believe it's not clear in the proposed amendments whether this is the case. The chamber believes that the remedial jurisdiction of the arbitrators should also be restricted in order to provide equal rights to all employees.

Fourth, is the expedited arbitration pursuant to the Labour Relations Act available for grievances seeking to enforce the Employment Standards Act? Again, we believe the proposed amendments need to be clarified.

Fifth, should not the minimum severance pay provisions of the act fall in line with the generally accepted awards made by the common law courts, and should there not be a single route of complaint regarding severance? Currently, if you read the Employment Standards Act you see minimum severance requirements. If someone goes to the common law courts, they are usually awarded minimum severance much greater than the Employer Standards Act.

The Employment Standards Act therefore, in most cases with respect to minimum severance, really is of no use, and we suggest to the committee that it be considered that the time lines for minimum severance com

into line with the common law courts, and second, that similar to the other amendments which are being proposed, only one route of complaint with respect to severance be allowed and the employee be allowed to choose which method he wishes, whether it be through the officer or arbitrator or, alternatively, through the common law courts. This again would provide an efficiency to the system and would provide an assurance that there is a true minimum standard and what the minimum standard is.

Sixth, it has been indicated by news releases that the amendments of Bill 49 allowing for a greater right or benefit assessment as a package have now been moved to the second phase of reform, and therefore we make no comments in respect of the proposed changes other than that the chamber strongly believes that allowing for a greater right or benefit as a package is a fundamentally important component of allowing the workplace parties the freedom to mutually agree to arrangements which, when viewed separately, would not be in compliance with the act.

This is particularly true with respect to northern Ontario employers who may have remote site locations. For instance, the statutory holiday can be worked by the employee and it may be negotiated for greater time back in the community in which the employee lives as opposed to being taken as a day off in a remote site location where it really doesn't mean the same to that employee — remote mines, tourist camps etc.

In summary, the chamber supports the two-stage Employment Standards Act reform process and supports Bill 49 as a step in that process and would urge consideration of the questions and issues we've raised in order to clarify certain provisions of the amendments and consider additional amendments to the act, either in this stage or in stage 2.

Thank you for the opportunity to present these submissions. We're prepared to answer any questions that we can.

The Chair: Thank you very much. That's exactly 15 minutes, which leaves us five minutes per caucus. As usual, we'll start our questioning with the official opposition.

Mr Dwight Duncan (Windsor-Walkerville): Good morning, and thank you for your presentation. Did I understand you correctly to say that you don't believe these amendments reduce minimum standards?

Mr Acton: What we say is that in some instances they enhance minimum standards. For instance, in the parental leave provisions of the act and in the maternity leave provisions and also with respect to vacations, there is an enhancement of the act.

Mr Duncan: We understand that, but did I correctly understand you to say that you don't believe the other clauses reduce minimum standards?

Mr Acton: What I said was we support minimum standards for workers.

Mr Duncan: I don't understand. You had indicated that you support the two-step process, and you just indicated to me that you support minimum standards and see enhancement to standards here, and then you indicated further on that you had problems.

If you accept all those as being true — and we don't agree with you; we believe there is a reduction in minimum standards — the difficulty I'm having is that that really means there's only one substantive section of the bill, section 20, which deals with arbitrators, and you've got six recommendations with changes to that, and you said you're concerned about the piecemeal approach to the legislation in the past. Don't you find that contradictory?

Mr Acton: Not at all. The comment with respect to the piecemeal approach was that the bill has been amended in successive years without any government taking a wholesale look at the entire act.

Mr Duncan: So do you think this is a wholesale look at the act?

Mr Acton: I do, in a two-step process, yes.

Mr Duncan: We don't agree with you. We think there should be a complete review of the act. We think there are errors in the arbitrator section; we support your position there. The government already withdrew the only section of the bill that it said originally was a substantive section, and we think it also affects minimum standards in a negative way towards working people. Frankly, you're right, there are three sections that do improve the standards, and I think there's been universal agreement on them.

The only thing that concerns me is, here we go again with another piecemeal amendment to the bill. You can't argue that a two-page bill — your presentation is longer than the bill. It's taken out the main clause on one hand and then, if we accept that what you say is true, the notion that there are no changes to the minimum standards here, nothing but an enhancement — I would submit quite the contrary, that it is a piecemeal approach. We would have preferred an entire discussion paper first before these amendments were made and we would have preferred to see the whole package.

We agree that there has to be a better way and a more efficient manner in which to administer the act and we're prepared to work on those things, but I just had some concerns around your presentation where you indicated that you didn't think there was anything substantive in it and then you were also concerned that we're doing amendments in a piecemeal fashion. The major issues in the Employment Standards Act are hours of work, minimum wage, a whole range of things, and we don't even touch them. I would have thought that you, like a number of other business organizations that have made representation, would have preferred to have seen a complete review of the statute. By your definition the only major section that's left is the arbitrators section, and you've said that there are major flaws with that.

0950

I thank you for your presentation and just indicate that we would have preferred too to have had the full package and be able to discuss the act and have a discussion paper prior to doing yet another piecemeal amendment of the bill.

Mr David Christopherson (Hamilton Centre): Thank you, gentlemen. Mr Acton, thank you for your presentation. I note that the actual wording you use in your brief on page 2 is, "The chamber also believes and supports

the continuing protection of minimum employment standards for workers," which leads me to believe that you're in lockstep with the Minister of Labour, who says these are minor housekeeping and indeed don't take away any minimum standards. You also mention that this was — I wrote it down — "a beneficial reform of the act." Further, you said, "It is a protection of minimum standards."

We have some real difficulty with those statements, given that — and I don't think you addressed it in there. If I'm wrong, I'd ask you to point it out to me, but I don't believe you addressed the issue of the \$10,000 cap that is now being placed on the amount of money a worker can claim for money they're owed, and that there will also be a minimum threshold they have to cross before the Ministry of Labour will step in. We also don't know what that minimum is going to be; the government won't tell us. To my mind, that is taking away a right that a worker now has.

I have posed this question to other chambers of commerce and they have said, "Well, there's still remedy available through the courts." But that requires that employee, who has done nothing wrong except work for someone who was unscrupulous enough to owe them money that they won't pay back and therefore the worker had to claim for it, to hire a lawyer, and they likely will have to take time off work to pursue the matter through the courts. That means they're out money. The way we decide winners and losers and whether you're up or down on something is whether it cost you anything. I would submit, with great respect, that it's difficult for anyone to accept your position that there's no loss of minimum standards when indeed workers have lost rights in that area alone.

I'll move to the second area so you can comment on all of it: the fact that workers can no longer claim for money owed beyond six months. Currently, they can go back two years for money they're owed. This law will limit that to six months. That is a minimum standard of protection that's guaranteed in law that now exists that will be watered down and taken away from workers. I really would ask you to explain to me how you reconcile that denial of rights, that watering down and lowering of rights that workers will have under Bill 49, and your contention that minimum standards continue to be maintained.

Mr Acton: The exact quote is that the chamber "supports the continuing protection of minimum employment standards." The debate as to whether there is a real reduction or not will continue, and I'm sure you members will continue that debate. The chamber supports minimum standards. We believe that in the workplace they're beneficial and they should be known and they should be clear.

I will give you an answer which you've heard before and maybe don't accept, but I'll give it to you again: that indeed there is resort to the common law courts, which, as you say, will cost money; absolutely, it will cost money. There are no rights in this society that don't cost somebody money: society in general, which we fund through taxation, and the government gets involved with officers who help to resolve that dispute; or hire lawyers

and the lawyers charge a fee, and the losing party in our common law courts tends to pay all or a portion of the fees of the winning side.

Yes, there are costs, but where costs — for instance, if someone is claiming an amount over \$10,000, which is above the Small Claims Court limit of \$6,000, there is already established, well-known route for recovery.

I can't resolve the debate with respect to whether there is a reduction in minimum standards. We've heard much and read much about it. We support minimum standards. What those standards are certainly has to be decided. Statistically, there would seem to be some levels which are more appropriate for the government to be involved, for example, those where the monetary level is below \$10,000, which is being proposed in Bill 49, as opposed to something which is a greater amount where there still is an avenue for pursuit and recovery, yes, at some cost, but those costs are recoverable. It then is up to the employee to take that route.

There's still no guarantee, as we've seen in the papers and as reported. The employer, who may be unscrupulous, where people have worked for that employer for nine or 10 months and haven't been paid, may be bankrupt and ultimate recovery may be impossible. We still don't have any debtors' prison or we still haven't returned to debtors' prison in this province or in Canada. Therefore, ultimate compensation is still not guaranteed. I don't care who orders it — an employment standards officer, an arbitrator or a judge.

Mr Christopherson: I'd very much like to pursue your response today, but time doesn't allow.

Mr John R. Baird (Nepean): Thank you very much for your presentation this morning. One of the things that's come up around the province has been the issue of collections of employment standards orders. Obviously, we want to encourage workers to be aware of their rights and that where they're not being respected they could make a complaint to the employment standards office, an investigation would ensue and then eventually an order would be issued. A period of time for an appeal would expire, and therefore the order would stand as is.

What we've found over the last four or five years, or even under the last two or three governments, of all parties, is that only 25 cents on the dollar is being collected. Even after all the time and expense and all the huge emotional toll these very fundamental aspects have for workers themselves, we're only collecting 25 cents on the dollar.

One of the parts of the bill is designed to ensure that workers can get the money they have every right to expect. Right now, like I said, it's only 25 cents on the dollar. There was a collections branch at the Ministry of Labour that was disbanded by the previous government in 1993; 10 employees were discharged. Actually, it went down to 15 or 20 cents for a while, but it's stabilized at 25 cents on the dollar. One of the proposals we've brought in with this bill is collection agents to go after what I call deadbeat employers, those people who aren't accepting their responsibilities under the act and are being negligent in terms of following through with payment they've been ordered to pay to the worker.

Can you tell us, with respect to your members, what else you think could be done to ensure that these moneys

are collected? We've heard across the province groups saying, "Just put more teeth in it." If there were any easy answer, I think it would be there. I know my colleagues in the opposition care deeply about this issue, and if there was an easy answer they would have gone out there to try to find it. What would your thoughts be, in terms of your members and your experience in the business community, to ensure that — albeit it's a very small minority in the business community who aren't accepting the act.

One of the unions that came forward a few days ago not only pointed out, obviously, the human rights issues of the act but also pointed out that it's not fair to businesses; that if business A fully accepts its responsibilities under the act and is a good corporate citizen, pays its workers a fair wage and obeys the Employment Standards Act to a T, company B right next door could be flagrantly disregarding it, and company A would be at a competitive disadvantage. Do you have any thoughts on that?

Mr Acton: There's no guaranteed method of collection, as I've said in answer to the last question. Certainly making the collection proceedings quicker and having a single route by which you can collect moneys, albeit if it's over \$10,000 you have an alternative route, is the best method that we believe at this point in time will, to a greater degree, assure collection. The cruel reality is that there will still be people who will declare bankruptcy or leave the jurisdiction of this province — and it is provincial legislation — or will make themselves so difficult to collect from that it will be nigh on impossible to collect.

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I don't have any recommendations which would be any better than I've seen to date. Insurance funds, bonding, all other forms of financial surety which might be posted to guarantee workers' wages would simply be another cost to the marketplace which would translate into a higher cost of doing business. In particular, in a city like Sault Ste Marie where many of our members sell to Americans, in the United States that kind of legislation doesn't exist and therefore there would be a competitive disadvantage because there would be an added cost. So I don't have any wild or innovative answers for you, unfortunately.

Mr Baird: One thing you brought up was with respect to bankruptcy. Obviously you can't get blood out of a stone, but I know it's a position that Minister Witmer has taken to contact and be in touch with one of her colleagues in the federal cabinet to try to seek changes to the Bankruptcy Act to give workers a greater priority than banks, for example. These are the people who earned that money and have every right to expect it.

Mr Christopherson: Why did you cut the wage protection plan then?

Mr Baird: If you think we can afford a Cadillac in today's society, why did you cut the employment standards collectors? Why did you fire 10 people? Why did you cut health and safety inspectors?

Mr Christopherson: Come on, John, don't blame the federal government. It's your responsibility.

Mr Baird: Why did you cut health and safety inspectors?

Mr Christopherson: It's your responsibility and you cut the wage protection plan.

The Chair: Order. Thank you, gentlemen. I appreciate you taking the time to make a presentation before us here today.

ALGOMA COMMUNITY LEGAL CLINIC

The Chair: Committee members, there's been a change in the agenda. Two groups changed positions and so the next group up will be the Algoma Community Legal Clinic.

Good morning. We have 30 minutes. Feel free to divide that as you see fit between either presentation time or allowance for questions and answers.

Ms Gayle Broad: First of all, I'd like to thank the committee for accommodating the change in schedule so that we can accommodate Mark's work schedule today.

My name is Gayle Broad and I'm a community legal worker with the Algoma Community Legal Clinic. With me today is Mark Klym, who's been a client of our clinic and has graciously agreed to come before the committee today to talk briefly about his own personal experience to illustrate some of the concerns we have about the changes introduced under Bill 49.

The Algoma Community Legal Clinic is one of 72 legal clinics across the province of Ontario. We provide free legal advice and representation to individuals who are on a low or a limited income and who live within an area bordered on the west by the Algoma district and on the east by Iron Bridge, a small community located about an hour and a half's drive east of Sault Ste Marie. Most of our clients come within the city, but we also serve a significant number of people who live in small and rural communities throughout the district.

The Algoma Community Legal Clinic, as an incorporated group, has endorsed the brief prepared by Professor Judy Fudge of the Osgoode Hall law school entitled *The Real Story: An Analysis of the Impact of Bill 49, the Employment Standards Improvement Act, Upon Unorganized Workers*.

Today what we plan on doing with the comments that Mark and I make is simply highlighting some of the areas of concern that Professor Fudge has raised that we feel are most pertinent to our clients. We recognize that this committee is hearing from a significant number of trade unionists today, and on other occasions as well, and we wish to go on the record as supporting their work and their concerns and issues as well. However, in our own work at the legal clinic it is the people who are not organized and who are not members of trade unions in the workplace whom we most commonly represent and whose needs we are most familiar with. Those are the people on behalf of whom we wish to present today.

Professor Judy Fudge in her brief states that there are four basic problems with the Employment Standards Act as it is currently enacted. First of all, there's nothing done to prevent violations of the act in the first place, to protect workers before the violations occur. Secondly, investigation of the violations of the act is quite time-consuming. Thirdly, there is too much room for pressure to be brought upon employees to have them compromise

their claims for wages owing and, fourthly, the collection of money owed by employers to employees is inadequate. Those are the four issues that we have particular concerns about.

I would like to ask Mark now to tell you a little bit about his experience and also his eventual resolution of the problems he had with his employer.

Mr Mark Klym: I never saw myself running into an employment standards problem or, as I now am, on social assistance. I came out of high school and went to work for Algoma Steel for seven years in a good, unionized environment, bringing in a healthy wage. Then, through no fault of my own, I got injured. My employer could not accommodate my injury, and as a result I ended up having to return to school, with the help of the Workers' Compensation Board. Going to school, I threw myself into it wholeheartedly, leaving for school at 6 in the morning, returning home close to midnight every night, earning three bachelor of science degrees in four years.

I came out of school into an environment where there simply wasn't a market for my skills. As a result, I ended up taking employment in 1993 with a small firm here in town. I wasn't making a great wage but made enough to keep the wolves off my back. I worked for them until August 1994. In that time, approximately October 1993, the firm began a slow movement to shift operations out of town, so by January 1994 I found myself commuting back and forth every week between the Sault and Sudbury, spending my weekdays in Sudbury, the weekends at home with the family. I wasn't making enough that I could afford to move my family down to Sudbury and the pressures began to mount to make just that move, to move my family to Sudbury.

I couldn't do it. Eventually the employer bought a house in Sudbury and put me in a spot where either I was going to have to begin paying room and board or find lodging in Sudbury or leave the firm. The choice I had to make was to leave the firm.

When I informed the employer of my decision, he asked me when I was planning to make that effective and I we negotiated a one-week notice period, although two weeks is the standard under the Employment Standards Act. He accepted a one-week notice period. The next day he called me, didn't even take the courtesy to talk to me face to face, left a message on my answering machine saying, "Don't bother reporting to Sudbury next week; we're going to cut the ties now."

When I contacted him, asking him about my severance pay, my vacation pay, he said: "There's nothing owing you. You've taken it all through various days off and such during the time of employment." Asked to substantiate those, he admitted that no, there wasn't time taken off in lieu of pay, but he wasn't going to pay me anyway.

I contacted the employment standards office. It took me nine months to resolve this issue. The delay was primarily engendered by the employer's refusal to make documents available — this is what I was told by the employment standards officer — by his constantly having an argument to support his position but never being able to substantiate by documentation and, finally, simply by his not making himself available to the officer to answer questions.

1010

The nine months that it took resulted in my having nine months' interest on bills outstanding that I could have paid with that money, and when the money finally came in, it didn't benefit me anyway because by that time I was on social assistance and it was all clawed back.

Would I have been better off going to the courts? No. From personal experience, I know that the courts are just as slow. I would have had to hire a lawyer. I couldn't do that. In the end, with an order from the court you've still got the problem of collection. So I fail to see how any benefit is made by the changes proposed by this act.

Ms Broad: I think Mark's presentation highlights a number of the problems which do result in a need to improve the Employment Standards Act. We agree that the Employment Standards Act needs to be improved. Unfortunately, Bill 49 doesn't seem to accomplish what we feel needs to be done. We believe there's a need for minimum standards for all employees and we do not believe that it is beneficial to any group to have that as a negotiating item at a bargaining table for unionized employees.

We also feel that we need to expedite the process. It should be speeded up. However, the reduction of time in which an employee can file a claim and the reduction of retroactivity to six months certainly does not penalize any employer; it only penalizes the employees.

We feel that the need for access to justice will not be assisted by people being obligated to pursue civil court action or by the need to make a decision about either pursuing one avenue or another within a two-week time span. If you are not familiar with the current state of affairs of legal representation, in northern Ontario, first of all, it's very difficult to find lawyers who represent employees, as opposed to management, in negotiations. That's because business here is not that great for employees, because we do have a smaller population and a very dispersed population across the north, but also because the major employers are unionized in the north so those employees are represented by their bargaining agents. For the small individual employee in northern Ontario, it's very difficult to access good legal advice regarding their rights, their opportunities and what benefits they are likely to obtain if they go through a civil court action, so a two-week period penalizes the employee.

The problem of making a choice and pursuing means for many people that they will drop their claims, and I guess in that respect Bill 49 may in fact expedite quite a few things. There may be a lot fewer claims going through because people will indeed drop their claims, not because the money is not owed to them and not because they don't have a good case, but simply because they cannot access representation to pursue that.

I think Mark's situation also highlights the efforts and the hardships that people on social assistance will go to to find employment. I think it's very relevant at this time in Ontario for this committee and for all members of the Legislature to pay attention to because there's certainly a strong movement out there that says people on social assistance aren't interested in working and that they must be forced to do to work. In fact, people on social assist

ance, like Mark, frequently will spend weeks away from their family in order to obtain employment at a very minimum rate of pay, so that they feel that they are making a contribution to society and to their family and to their community. I'd just like to point that out to the committee.

I think it also raises a very significant issue for social assistance recipients in that if they do not feel able, under these amendments proposed in Bill 49, to pursue the money owed to them through the courts, then does that mean they're going to be denied social assistance because they're not making reasonable efforts to pursue money owed to them, as is currently the obligation under the social assistance legislation?

What happens to persons who don't know about the new six-month statutory limit and therefore lose their right to pursue the money owed to them? Does that also mean that if they do not pursue it within the six-month limit, then they will have social assistance denied or benefits severed because they have not pursued that money owed to them?

I think Bill 49 needs to be looked at again. We believe, as the chamber of commerce does, that the Employment Standards Act certainly needs to be improved in a holistic fashion, not in a piecemeal fashion. We encourage this committee to make recommendations that the improvements be ones that are carefully considered, that are discussed carefully with employees and with people who, like Mark, have had the experience of using the system in place and can point out the benefits as well as the problems of the current employment standards.

We've submitted a written brief and we would be happy to answer any questions you might have on that as well as on the comments we've made this morning.

Mr Tony Martin (Sault Ste Marie): I think it's appropriate that we should have your presentation early on in the day so we can focus some attention on the fact that this piece of legislation will have probably a greater impact on non-unionized workforces out there, the small operations that have people working on minimum wage for the most part, with very little protection because there is no union. Somebody has to speak on their behalf to protect their rights, which all governments of various stripes contributed to building up over a long period of time, and now we see an attempt to take away, diminish those rights.

We know that in Ontario over a long period of time anything that organized labour has fought for in the workplace, sometimes at great personal expense, and ultimately, through efforts and with the support of political parties like our own, has enshrined in legislation things that accrue to everybody in workplaces, has in many ways — and you've described some of them very clearly in your brief here today — gained some sense of stability for the workplace and for workers and the economy out there that I think is going to be seriously damaged in a significant way if this bill is allowed to go through.

You brought Mark today, and it's always good that we hear stories, that we're able to put a face to some of what's going to happen and what has happened and to

exemplify the need for even stronger basic standards for people.

How much of this work do you see or do as a legal clinic worker either directly or indirectly because of this, and what do you anticipate will be the fallout, given that we're moving to the courts in a very significant way here and the cost will be prohibitive for most low-paid employees? Any idea, any thought, any work going on to try and determine that?

Ms Broad: I can't give you a precise figure. I know that in 1995 we handled 27 cases. Actually, we do not advertise employment standards as part of what we do as a clinic and we do very little of that work. Most of our work is direct referral to employment standards officers with sometimes coaching people in how to deal with employment standards or how to identify what their issue is. So that's a very small percentage of the work that is certainly out there because, as I said, we don't tend to do this work as a clinic. Because of the large area that we have to service, we have to make decisions around what we list as priorities. Social assistance, unemployment insurance, disability benefits and tenants' rights tend to make up the largest proportion of our work. Human rights and employment standards we basically refer over to the government offices that have been, up until now, available to people.

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Mr Martin: You have painted a pretty grim picture. We all know that probably upwards of three quarters of the workforce in Ontario is non-unionized and very much dependent on some very basic standards to make sure they have what they need to keep body and soul together and keep a job. You don't do that kind of work for the most part because you are busy with other things and it is not within your mandate. People do not qualify for legal aid on issues of this sort, is that correct?

Ms Broad: That's right.

Mr Martin: If they're non-unionized, they don't have the backing and the resource of unions, so where do they go?

Ms Broad: Up until now they have been going to employment standards, but I think that's a very big question.

Mr John O'Toole (Durham East): It's nice to be here in Sault Ste Marie. I hope you don't mind, Gayle or Mark, if I just ask you a couple of questions to clarify some of the story. I appreciate the story but I do not understand it. You attended university for how long, Mark?

Mr Klym: Four and a half years.

Mr O'Toole: I commend you for the effort. That's good. You were on WCB at that time?

Mr Klym: Yes, I was.

Mr O'Toole: My next question is, how long did you actually work for that company after you graduated? Was it around 11 months?

Mr Klym: For 11 months; July 15, 1993, to August 8, 1994.

Mr O'Toole: Okay. Now you haven't worked since 1994.

Mr Klym: I have worked on make-work projects, section 25 projects.

Mr O'Toole: Are you on a WCB FEL or NEL award or anything like that?

Mr Klym: No, I was pre-1990, so I am on a 10% disability.

Mr O'Toole: Based on which? Your Algoma pay or your previous pay?

Mr Klym: Algoma Steel.

Mr O'Toole: And you still qualify for social assistance on that?

Mr Klym: Yes, I do; 10% of my Algoma Steel pay is \$149 a month.

Mr O'Toole: Your story tells me — and I guess quoting the Judy Fudge report, and Gayle has said this morning that she agrees there are four areas that need to be amended or changed. So you fundamentally agree there have to be changes. What would you like to see, Mark, as the most important change? You're a real case, a real story, as Judy Fudge called hers a real story. Yours is the real, real story.

Mr Klym: The most important change would be to expedite the process. It took me nine months after I filed. The first delay came from the fact that I was originally hired in Sault Ste Marie, I worked in Sault Ste Marie, I lived in Sault Ste Marie, but in the time between my original hiring and my leaving the firm there was a slow transition to where the operation was now solely out of Sudbury, and as a result there was a delay in getting the file even started because it had to be placed in Sudbury.

Mr O'Toole: What was the amount of your claim?

Mr Klym: It amounted to \$1,100.

Mr O'Toole: The average claim is \$2,000. We're going to hear a lot of presentations this morning — I hope you hear them — about why the \$10,000 threshold is too low. The average is \$2,200; 96% are under \$10,000. We're trying to focus scarce resources in a province that has no money left — I'm not trying to be smart — to help the most vulnerable and those who aren't protected, as Tony Martin said this morning. We really are trying to do that, and the large unions are — do you believe? You're at Algoma — capable of taking care of the workers' rights and issues.

Mr Klym: The large unions for the most part are capable of taking care of the unionized workers. But as Mr Martin and Mr Christopherson said, 75% of Ontario's employed people are non-unionized.

Mr O'Toole: Yes, so we've got to be very careful with the scarce resources in that ministry.

I appreciate your presentation this morning and I hope the changes we're making in this and phase two really do help the most vulnerable. That's the intention of the Minister of Labour and it's my intention as a member as well. Thank you for your presentation.

Mr Baird: Thank you for your presentation. Certainly a message that I'm going to take back is that we've got to make a better effort with respect to customer service, when you hear stories of cases going on forever, whether it's a good decision or a bad decision to have an expeditious investigation in a reasonable period of time and get back to you. I think we can do a better job and I'm certainly going to take that back. I don't think any of us in any party are satisfied with it taking that long.

Mr Pat Hoy (Essex-Kent): Good morning. I appreciate hearing from both of you. Mark, I appreciated hearing

your experiences. We have at various hearing dates heard from people who can tell us at first hand how the employment standards or other laws have affected them in combination, so I was pleased to hear that.

I want to ask about the brief. You talked about the limitation period going from two years to six months. We had a presentation the other day that said approximately 95% of the people who claim have left employment before they start. They are worried about reprisals such as you state here. Do you have any estimate or a firm figure with your experience in how many people leave their employer before they start to initiate a claim?

Ms Broad: I don't have current figures on that at all.

Mr Hoy: Would you have an opinion whether it is a significant number, or is it not a particular issue that they leave first?

Ms Broad: In our experience, almost everyone who contacts the clinic has already left employment before they are willing to file a claim. One of the major concerns we have, which we outline in our written brief and which Professor Judy Fudge has stated very clearly in hers, is that the large need, the real gap in people's information about employment standards and the rights they have currently existing under the act — if you look at northern Ontario you will find that our literacy rate is much lower, the distances between court offices, between government offices providing services such as employment standards are very great — many people do not know where they can access even information about it.

Most of the people who come to our clinic whom we wind up often referring to employment standards come to us through word of mouth. Someone else has used the clinic's services at some point and said, "I don't know if they do this work, but here's where you can get information about it." That's how word spreads.

One recommendation we make is that there needs to be much more information, a real effort made such as I understand is being made in British Columbia, to educate people about what rights they have, how they can enforce them and what the penalties may be, what kinds of actions employers might try to take that they may be able to object to and maintain their employment.

Mr Hoy: You're talking about knowledge and information as to what one's rights are. We had a presentation in Windsor where it was strongly suggested that people know of their rights. That comment was probably in the minority of views we've heard through the hearings. We're hearing more often that people are not aware of their rights, similarly with some of the personal protection they have at home in purchasing, for instance various insurances that have nothing to do with employment, but they're for their own protection and until claims are opened they didn't realize that maybe they were less covered than they thought.

The \$10,000 limitation as a maximum for claims, I'm having difficulty with the notion that if 96% of the claims are under \$10,000, why we are so concerned with putting the maximum in. It seems to me that, as was mentioned most claims are averaging \$2,200. Why are we worried at all about a maximum here?

You represent people who in the main are unorganized as far as their relationships in the workplace. Are there

people who exceed the \$10,000 claim? How is this going to affect them if they have to take the route suggested by the government?

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Ms Broad: I can't answer that question. I haven't myself been in contact with anyone whose claim was above the \$10,000, but I do find it difficult to understand why there has to be a limit of \$10,000. I'm not sure where that concept comes from in terms of improving the Employment Standards Act.

Mr Hoy: We would have to open up the discussion again into that particular case, but for myself, I have great difficulty wondering why we're putting a cap when only 4% of the claims exceed that cap currently.

Ms Broad: One of the concerns we do have, though, is about the fact that retroactively the person can only claim for six months retroactive, which reduces it down from the current two years. Again, I do not understand the rationale for that. Revenue Canada requires that — my understanding is that all business financial records have to be kept for a minimum of five years, so why would we reduce it down to six months? Those records should be easily accessible.

I don't know why we would want to limit an employee's right when they may have continued to work under duress. We all know what the unemployment rates are right now. If this is the only job that's available to you, you're not necessarily going to risk your employment in order to ensure that you're getting moneys that you're entitled to, whether they be vacation pay or whether they be an hourly rate that has been reduced or whatever. For many people, quitting a job is not an option. Particularly now with the penalties that accrue with unemployment insurance and with social assistance, you cannot quit a job. So we have to be very careful about what kinds of standards we're going to put in place for people when quitting a job is not an option for the vast majority of people in this province.

The Chair: Thank you for taking the time to come and make a presentation before us here this morning.

Next up is the Sault Ste Marie Construction Association. Seeing no representative, it's my understanding the next group is here.

UNITED STEELWORKERS OF AMERICA, LOCAL 2251

The Chair: I see the next group is here, the United Steelworkers of America, Local 2251. Could you come forward.

Mr Ronald Bouliane: Good morning, Mr Chairman and honourable members. Unfortunately, I didn't have time to get my presentation photocopied. However, I will make it available by the end of the day. I'll undertake to have it photocopied hopefully during the lunchtime hour.

My name is Ron Bouliane and I represent the United Steelworkers of America, Local 2251. This happens to be the largest Steelworkers local in this area. We comprise, I believe the estimate is around 3,400 members at this point. As such, we undertake to actually represent the views of many of the other Steelworkers locals in this area.

I hope you will allow me a slight digression at this time. This past Sunday, as I was preparing for this presentation, I paused to recall the homily which was given in my church as a lesson to us. The homily regarded the word "authorship" and its cousin "authority," the ways in which we put words and ideas together and how the same words with different intents can cause entirely different scenarios to evolve. The priest who gave the homily said of the word "authority" and its root "author" that the Latin root is very precise in its definition and usage, and the obligation to use it correctly that we are put under when used.

So may we also consider the exercising of "authorship" and "authority." When used in the proper context and spirit, many good rules and laws are authored and enacted for the benefit of those who live in a society. Similarly, authority, when exercised, can be used to help a society to progress for the benefit of all, it can be used also to maintain the status quo or it can be used to roll back progress to the benefit of a few at the expense of many. This latter is what I fear is taking place in the society we know of as Ontario.

The proposed changes to the Employment Standards Act, known as Bill 49, are of grave concern to the working people of this province, the real contributors to our society, the ones who are burdened with the cost of the operation of this province. What you are proposing here is legislation which will make it harder for those workers, both organized into bargaining units and unorganized, to successfully achieve the wages and rights which are their due.

If what the present government is seeking to achieve is a low wage, low expectation, poorly protected, uneducated workforce that will subject this province to unheard-of levels of labour unrest, then this Bill 49, when combined with the other anti-labour and anti-education legislation which has been enacted over the past year, is certainly a definite step in that direction and we shall certainly see some negative results because of it.

On the other hand, if the government of the province of Ontario did less listening to the wheelers and dealers and users — and I was going to say the pimps and whores of Bay Street and the BCNI, but decided to be less contentious — whom they travel hand in hand with and who collectively owe this province and this nation over \$40 billion in unpaid and deferred taxes, and instead paid some positive attention to what the working people of this province really need, much could and would be accomplished. To see evidence of that, you have only to look at what has been done at Algoma Steel, St Marys Paper, Algoma Central Railroad, Spruce Falls Power and Paper, Provincial Papers, de Havilland Aircraft and any of the other workplaces in Ontario which have been the beneficiaries of cooperation between labour, management and government as equal stakeholders.

Privatizing enforcement of the Employment Standards Act, section 20 of Bill 49: With this change, the government is dropping the function of enforcement of the act into the lap of labour. The bill removes the ability of working people to access the investigative and enforcement arms of the Ministry of Labour. Instead, unionized employees are forced to use a grievance procedure within

the collective agreement to realize their rights. The result of this is that now unions will have to foot the cost of the investigation and determination of complaints of violations to the ESA and deal with the results through the grievance and arbitration process. This will give the arbitrator the powers that presently reside with the various agents of the ministry.

This will cause a tremendous burden on the resources of unions. The cost, legal complexity and drain on manpower for many unions will be staggering as they face the prospect of having to carry out what is presently the role of the Ministry of Labour. Faced with this burden, many unions and individuals will have second thoughts about proceeding with a legitimate complaint. This will unfairly penalize the unions for violations of the act which employers have undertaken to commit.

Enforcement of the ESA as it applies to non-unionized employees: There are four sections of Bill 49 which are of concern to non-unionized employees: sections 19, 20, 21 and 32. When added together, these proposed additions become an all-out attack on those workers who have not the resources to defend themselves from unscrupulous employers.

In the first place, they prevent an employee from pursuing both a complaint under the ESA and a civil action. The employee must pursue one or the other, but not both.

Secondly, for many working people, seeking a legal remedy through litigation is not an alternative because of the costs and time involved. This makes a complaint through the ESA the only viable alternative, because it has the resources at its disposal. But now, anyone opting for this route is faced with having to decide within two weeks on pursuing the claim, which is somewhat unreasonable in our view, or taking their chances with a civil action. Those who are unfamiliar with these requirements will inevitably suffer the consequences of loss by default.

The imposition of a six-month time frame as opposed to the present two-year period to collect moneys owed also causes some problems as many do not choose to file a complaint until they are secure in another job and will not suffer retribution from the offending employer.

Also, the monetary recovery cap of \$10,000 is far less than some cases which have involved sums that were two and three times that amount. There is also a minimum claim which is yet to be decided.

We of Local 2251 believe that these changes are unfair and that again it is the aggrieved party who is penalized and not the employer who perpetrated the offence in the first place.

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Privatizing collection: Under the new legislation, section 28 of Bill 49, private collection agencies are to be given the power to collect fines, penalties applied and moneys owed to employees. This is a radical departure from accepted practice and is a major devolution of authority from the government to the private sector. It is a mistake to believe that private agencies will be any more successful at collecting moneys owed than existing government agencies are. In fact, it is because of lack of enforcement mechanisms that the present system appears to be so ineffective. If there were more effective

measures developed aimed at preventing delinquencies and enhancing recovery as well as more effective deterrents to abuse of the act, then there would be a higher success rate.

The potential for collection agencies to misuse the system themselves is also present. If the agency can only collect a partial settlement, the agency may choose to apply a recovery fee for services rendered. This amounts to a user fee, which if charged against an inadequate settlement is not only unfair, it also penalizes the employee again.

Also, collection agencies may pressure employees to opt for smaller settlements in order to expedite recovery, thereby giving the employer a break while collecting a user fee from the employee. This will only encourage future violations by offending employers.

It is our belief that the government should not absolve itself of the responsibility for collection and enforcement issues and that these areas have to be strengthened to be effective.

Other notes: It is pleasing to note that one of the most possibly contentious issues has been temporarily dropped from Bill 49. I am referring to those sections that would have enabled employers to force their employees into accepting standards that were less than the provincial minimums as long as the overall package is deemed to be equal to or greater than the existing package. This would have been terribly difficult to police and would have led to much labour unrest. It would also have been like comparing apples and oranges where wages, hours worked, benefit entitlements and so on are concerned.

These standards are our society's accepted minimums and should only be improved upon, not negotiated out of existence at the whim of some unscrupulous employer. We have learned long ago not to depend on the largess or the benevolence of our employers and do not wish to be placed in the position of fighting again for the same minimums that our parents and grandparents fought for.

One can only hope that this issue is dead, but I can't help but feel that we will be seeing it again in the future from this government.

We are similarly pleased to see that vacation entitlement of two weeks per year will accrue regardless of whether the employment was active or not, section 28 of Bill 49; that termination pay is due seven days after termination, section 5 of Bill 49; that parental and maternity leave will now count when calculating service and length of employment, section 12 of Bill 49.

Although there have been some minor positive changes, the overall impact of Bill 49 will be negative and therefore we of United Steelworkers of America, Local 2251, are opposed to its implementation. There is a serious problem with the provisions of this legislation putting those least able to defend themselves at even greater risk than they already experience. As was said before, the answer is not to dilute and jeopardize, but to strengthen and enforce. Thank you.

The Chair: Thank you very much. You've allowed us six minutes per caucus each this time. The questioning this time will commence with the government members.

Mr Derwyn Shea (High Park-Swansea): Can I ask you if you have managed to identify two of the issues

that are of chief concern to unions, and I'd like your comments in so far as Bill 49's proposals are concerned. The first is that the proposal seems to place an onus and therefore a cost upon the unions that the unions don't feel appropriate to bear.

Mr Bouliane: I surmise that you're referring to the process of following through on the grievance procedure?

Mr Shea: Yes.

Mr Bouliane: Many small locals do not have the financial resources to pursue those costs. For the large locals, as has been stated before by others and by I believe Mr Christopherson, by and large they do have the resources, although it is a costly measure. Many of us have that embedded within our collective agreements, but for the smaller locals this becomes a very, very large drain on their resources.

Mr Shea: Is that cost factor — I want you to draw upon your experience in the trade union movement — is that in fact a significant issue?

Mr Bouliane: Yes, it is.

Mr Shea: Is that a real driving issue, the motivation behind some of the concerns with this?

Mr Bouliane: Within our local itself, whether or not to pursue grievances under the collective agreement becomes a very large issue because they are expensive issues and we have to decide which to pursue and which not to pursue.

Mr Shea: That would pick up on a comment made by the Transportation-Communications International Union, I guess, yesterday that suggested that unions aren't bottomless pits of dollars to fight claims.

Mr Bouliane: I wish they were bottomless pits. Unfortunately that's not the case. There is a definite limit to what you have.

Mr Shea: Yes. It's like the way some people have viewed government as bottomless pits of dollars.

Mr Bouliane: In some cases.

Mr Shea: But I see what you're saying.

Let me do the second point to sort of flesh out where there's some concern here on the part of the trade union movement. It has been suggested that some of the reasons for complaint by unionists towards Bill 49 is the possibility that the membership is going to begin to use Bill 49 as a launching pad for fair representation suits.

Mr Bouliane: That is certainly a concern. In my experience, all approaches in the grievance procedure have been treated equally as to their merit. But one could see down the road that if a union's financial resources were somewhat limited, yes, somebody would have to make an arbitrary decision on what they were going to do.

Mr Shea: So there be may more suits, and that obviously is not something that —

Mr Bouliane: No, it's a cost to the system.

Mr Shea: Sure. Obviously being held accountable is sometimes a costly thing as well.

The issue of how to provide employee protection is something that troubles the committee, I know. There are some unscrupulous employers. We all know that. In fact we heard earlier the chamber itself admitting that there are some, a very small number, but there are some that leave the province to escape judgements of one sort or

another. They go into bankruptcy, and on the issue of bankruptcy you may have some opinions of how we begin to press upon the federal government the need of getting its act together to change the laws so we can at least put employees up at the front end of the claim rather than leave them at the back end.

Mr Bouliane: That is a very real concern to many people, especially in the smaller to medium-sized workplaces running into financial difficulties. I wish you well on getting the federal government to address this issue. We would like to see, obviously, some kind of deterrent fee or some kind of a mechanism in place, as you said, that would put the moneys owed to the employees first, on the top of the list.

Mr Shea: A final question involves the fact you represent a very large, a very traditional union. It's got a lot of experience in the field and it deals with what one may call the traditional workplace. You understand it, you can see it, you can taste it, you can smell it and so forth. But the fact is that the world is changing. We saw last week the city of Toronto with some surprise discovering that one in five jobs within the city is now what we call distant or home work and so forth. So the whole workplace is changing.

The intent of the minister in terms of Bill 49 is to begin to find ways to extend protection to workers who are not just in the traditional field, but beyond. There lies some of the debate about what some perceive as the minimum standards themselves may be negotiated to meet local needs. It may be geographic. The north's needs are far different than the needs perhaps in the large metropolitan area of Toronto. Does that at least seem reasonable as an approach? We may bandy about what this line is, but at least beginning to recognize that there are some changing circumstances in the workplace, is that something we should recognize?

Mr Bouliane: There are certainly changes within the workplace, but we do not believe that any of what we accept presently as minimum standards should be up for negotiation as a package.

Mr Shea: So a worker in, say, Algoma on the floor is the same as the worker in a home.

Mr Bouliane: They should have basically the same right to those minimum standards.

1050

Mr Shea: Whatever they are.

Mr Bouliane: Whatever they are. Now —

The Chair: Sorry, I didn't mean to cut you off. Thank you, Mr Shea.

Mr Shea: I was just going to send a message on to his pastor, as well, about authority, but I'll do that privately.

Mr Hoy: Good morning. I appreciated your presentation. You did speak about the two-week period where people could decide on a course of action. In all cases we hear that the employer, and most certainly the employee, wants to see a remedy come quickly, even the presentation just prior to you where you wait 11 months, I guess it was. Do you have an opinion on, if it isn't two weeks, what it should perhaps be?

Mr Bouliane: That would have to be examined but I certainly think in some instances that I've read about that people who are unfamiliar with the system, two weeks is

not a reasonable amount of time, especially when you're dealing with people who are recent immigrants or from ethnic groups that don't really have a lot of exposure to what they're entitled to as far as the law is concerned.

Mr Hoy: In one part of the act as it regards appeals, the government proposes to change the decision-making time from 15 days to 45. So in this particular case, do you have an opinion that maybe 30 days to decide would be adequate?

Mr Bouliane: From my point of view, obviously you need a reasonable amount of time to reconsider your position. If you're considering an appeal or if you're considering, in the case of an employer, paying whatever fine you've been assessed, 45 days, as the government has indicated, might be an appropriate length of time. There again, that would be open to discussion.

Mr Hoy: In that this bill is before us now, it'll be open for discussion, and then the time lines are that this is going to close, one would think — unless the minister changes her mind about certain aspects — relatively soon.

You talk about privatizing and society, as well, at the beginning of your presentation. Some day, not soon but historically, someone is going to look back on past governments and how they treated society, and what we see here is the government saying — or, at least, from my view what the government is saying here, "We think society should be able to handle these problems themselves," this being the employer-employee aspect of this act, "and we rather like the idea that we can just back off quite a fair distance from this." One good example is collections and the idea that they are going to have others go out and try to achieve to bring in more dollars for employees than presently is the case.

We had a presentation yesterday that the fees for that private collection were approximately, if my memory's correct, 25% to 40% of the actual dollars in question. So the fee could be as high as 40% of a \$100 claim. It seems that there's quite a downloading here to someone, and quite often, the employee. So I think this government and others will be judged on how they treat society and how they download or abdicate their responsibilities as it applies to all of us.

The government often says, "Well, in many cases, the employer has no money." But they have to recognize at the same time, and try to balance this whole question with the opening fact, which is that the employee has no money either, so I appreciated your comments this morning.

Mr Christopherson: Ron, thank you for your presentation. I appreciate your coming here today. I think it's interesting that you started your comments with some discussions that happened in your church. One of the things that we're seeing more and more is a lot of church leaders from different faiths speaking out, which they don't do lightly, about this government's agenda and what it does to the most vulnerable and the poorest people in our society. I think that's a strong indicator of just what kind of agenda we're seeing at play here with the Common Sense Revolution.

I probably speak for a lot of your members and a lot of other workers when I suggest how offensive it is for the government to ask questions about the federal govern-

ment's responsibility to workers in a bankruptcy when they gutted the wage protection plan which we brought in. It was the first one that gave workers somewhere to go to recoup wages and vacation money they were owed when there was a bankruptcy. They slashed that from \$5,000 to \$2,000. They did it in their Bill 7, which of course was a bill that not only legalized scabs, but they did it in a way that didn't even involve any public hearings, and I find that quite offensive.

Also, to talk about the most vulnerable and their care and concern about the most vulnerable — one of the first things they did was slash the income of the poorest people in Ontario by 22%. I think it's just hypocrisy to the highest degree.

I want to talk to you a bit about the issue of the concession bargaining and what you see happening there. The minister has said she's deferring that for now, but clearly it's still there on the agenda. The government would have you believe it's a question of flexibility and making things easier to accommodate the needs of the various parties, and yet I would suggest to you the reality is that with scabs now legal again in the province of Ontario, the ability to move capital so quickly anywhere in the world, the constant threat of relocating jobs if a contract isn't to the pleasure of an employer and with an employer-friendly government that clearly is not going to stand behind the workers in any situation where they're under a threat, we could see collective agreements foisted upon unions, particularly smaller ones, isolated ones, maybe weaker unions, that include overtime provisions that not only affect the quality of life of workers but the health and safety. In fact, we've had some of your colleagues from your union speak to us about that in other parts of Ontario.

Would you just elaborate on how you see that might affect workers here in the Sault in your union?

Mr Bouliane: For the Steelworkers Local 2251, we have a different type of system. I'm sure many of you are familiar with the restructuring that we went through over the previous five years. We have protections embedded within the system that guarantee us basically a right to sit at the table where the decisions are made. We really don't have a great deal of fear about something being slipped by. For smaller locals, it becomes a somewhat more delicate issue, because they have not got the resources nor do they have the ability to sit in the boardroom where many of these decisions that you're referring to are made.

It's our belief that when you develop minimum standards, those are non-negotiable. Those are the least that society should accept from an employer and an employee, and it's incumbent on both the employers and the employees to see that these standards are met. That refers also back to health and safety. I'm sure you know well the Steelworkers' involvement with health and safety issues over the past number of years, and it's not by accident that they do get involved in that, because we have learned over many, many years that if we don't get involved with developing programs, then the employer certainly won't.

Mr Christopherson: One of the things the government said about the second round of the overall review over

the next year of the Employment Standards Act is that the workers of Ontario ought to have faith that this government will protect their rights in this year-long review. In light of the fact that, again, scabs are now legal in the province of Ontario and the resulting violence that can happen as a result of that, the attack on WCB, the shutting down of the Workplace Health and Safety Agency, the bringing in of forced labour under workfare, just how much faith do you have that this government really plans to give more protection to workers during this year-long review?

Mr Bouliane: You're kind of putting me on the spot, but I have to honestly say that I have not really that much faith in the ability or the desire of the present government to protect the rights and needs of the working people of this province.

Mr Christopherson: Thanks a lot, Ron.

The Chair: Thank you for taking the time to come and appear before us today. We appreciate it.

1100

DEL VANDETTE

The Chair: That now leads us to the Injured Workers Advocates of Sault Ste Marie. Good morning.

Mr Del Vandette: Mr Chairman, members of the employment standards committee, it's an honour to be present here today to voice my personal opinion regarding the proposed changes to the Employment Standards Act. I'm quite certain that those have preceded me as well as those who will follow me were and will be quite eloquent and thought-provoking with their words.

I do not come before you today with reams of sophisticated research or opinion polls. These you are already privy to. I also do not come here before you with great words of wisdom, professing to have the cure-all to the labour problems and unrest afflicting our great nation. I do not have the ultimate answers we are all seemingly desperate to lay hold of.

What I do have are some words that I truly hope and pray you will receive with open ears and hearts. When our great country was first opened and settled upon, it was done so by men and women with courage, dreams and vision. It was not the industrial corporations, banking institutions, paved roads or fancy high-rise buildings that made our country what it is. It was people, men, women and, yes, even children working alongside their parents. They were the ones responsible for the beautiful land we enjoy today. They were for the most part down-to-earth, commonsense people. They struggled, sacrificed and built for the benefit of all and for the future.

It was also these same kinds of men, women and children who by the thousands fought and died for our rights and freedoms. These individuals made the ultimate sacrifice for our sakes, that we should enjoy freedom from tyranny, oppression and dictatorship. They gave their all that we might have the freedoms we enjoy today: freedom to choose our government and representatives, freedom of speech, religion, thought and so much more, things that we merely take for granted, giving no thought to the supreme price paid for our way of life.

These people knew from experience that hardship could and would revert man back to the brink of sav-

agery, both in the means he uses to get his food and the lengths he will go to get it. They saw through experience that change is an irrevocable law, that the world could not and would not remain static. They and future generations saw that to survive and work as a nation, there had to be compromise and neutrality, a place where cultures, ideas, religions and people could work and live in harmony with each other, but those changes had to be positive.

Many of those men and women who first opened up our great country became quite prosperous through their own blood, sweat and tears, yet among these hardworking individuals came those who wanted nothing more than to profit by the blood, sweat and tears of others. They did not hesitate to engage in the use of slave labour, which included children, to get what they wanted. They gave no thought whatever to the health, safety or wellbeing of their vassals. Slavery, bondage and the use of child labour are still prevalent in many parts of the world today, as we are all well aware.

As time went on, these tyrants were looked down upon by most of the civilized world. Slavery became unpopular. Through time, dotted by wars and unrest, governments were pressured into enacting laws to protect the rights, health and safety of these working men and women. Laws relating to workplace health and safety, compensation to workers injured on the job, hours of work, overtime, pollution, stress, wages, all these and more were created as strict guidelines aimed at protecting workers from the unscrupulous corporations, individuals and businesses who could not or would not accept less than excessively large profits from the skills and labour of others.

It is advantageous to all when someone takes it upon themselves to become an entrepreneur, but when exorbitant profits are made to the detriment of society, it is the responsibility of our representatives in government and labour to step forward and protect society from those who do so without shame or concern for the rights, health and safety of others. Profit is good, it can help to build and strengthen our way of life, but it can also destroy lives.

A famous writer once penned this statement: "There is no greater honour than for an individual to assist in the governing of the people, yet there is none lower than the individual who betrays that trust." When business people use some of their exorbitant profits in an attempt to influence government representatives to lessen or eliminate the laws protecting society and labour from their irresponsible actions, they are dishonouring and placing themselves among the lowest forms of life there are in existence. The same fact holds true for labour. When the labour movement attempts to influence our government representatives to enact or create laws which make it excessively difficult or impossible for business to operate or realize some profit, then it too lowers itself.

When the people go to the polls on election day, they elect and place their trust and hopes in representatives who promise to represent their best interests and the best interests of the nation as a whole, not just a select few. Those who worked hard in these election campaigns were not forced to do so. Those individuals who sought these political positions did so of their own free will, promising

to represent their constituents to the very best of their ability. When these individuals gain their positions in government, they are compelled by moral and legal obligation to represent the best interests of all of society, not just the influential or wealthy who made large contributions to their election campaigns or political party. They are supposed to represent all the people, not just those who can best afford it.

As a worker injured on the job, I have experienced personally the degradation, frustration and sometimes overwhelming bureaucracy involved in dealing with business and government representation. As a reward for being injured, I was fired. Now not only am I forced to remain a cripple, enduring chronic pain and even further injuries resulting from complications to my original injury, I am bombarded with an almost daily dose of accusations of failure to provide obligatory paperwork which the system required yesterday. Even though I am expeditious in all that is required of me, I am made to feel degraded and have been treated as though I am a burden to the system which was put in place to represent and protect me.

I know from experience all about deep depression brought about by frustration and unbearable pain. I know through experience the terrible frustration encountered in dealing with seemingly uncaring adjudicators. I know from experience the torment and overwhelming frustration of trying to get someone to listen to reason. There have been many, many occasions when the pain and depression have caused me to consider committing suicide. Through deregulation, biased laws and improper or neglectful representation, suicide may become the most favourable option for all of those in my situation.

Our people do not need a lessening or deregulation of labour standards. We do not need regression; we need progression. We need enforcement and respect for those laws set in place to protect society, laws and standards which already exist, laws that were given objective thought to, laws that were meant to allow freedom and protection for all people, not just a select few.

It is openly obvious to anyone with the gifts of sight, sound and thought that our labour standards and laws are being stripped and rewritten to such an extent that our society is being propelled backwards to the time of forced labour, slavery and even use of child labour. Shame, decency and morality have been replaced by the profit margin. Laws, regulations and guidelines which were set in place to protect all of the people of our great nation are being scrapped and are being replaced by rights and freedoms to only the most influential and wealthy.

This process of elimination and bias is beneath the contempt of any supposed free society. Government, business and labour can and must work together in harmony in an attempt to stop the insanity overtaking our society. We must all work together towards some neutral compromise which will benefit all of society. Workfare over job creation is not the answer. Exorbitant profits over the welfare of all Canadians is not the answer and must be stopped.

We have all been aware for some time now that we are slowly but most assuredly losing our health care system. Our hospitals are overadministered and dangerously

understaffed. Through cutbacks and downsizing, our health care system is reaching dangerous lows. Health care is being compromised by the ever-present huge profit margin. It seems that when inflated profit margins are not attained, cutbacks in staffing and patient care suffers while upper administration remains intact. This I have seen with my own eyes and have had painful experiences because of these cutbacks.

1110

Our education system is also not immune from the profit-making disease. Not only are our children going to suffer from this, we as adults who may decide to return to the educational system some day will also feel the dreaded effects of the terrible profit-only disease. Because of some of the thoughtless laws and restrictions placed on the rights of parents to discipline their children, these children now show little if any respect for their parents, authority or themselves.

It should be obvious that this attitude and disrespect will be carried with them throughout their lives and will be spread like any dreaded disease. These children will grow up with total disregard for the rights or wellbeing of others. If by some miracle of chance they do complete their education, they will carry this self-serving attitude into their respected futures, perhaps as business people or into government, caring nothing for anyone but themselves, may God help us.

Each of us has been placed on this earth for but a short time. Each of us is given the responsibility of making it a better place for future generations. Time is not ours to keep, it is only borrowed. Can we state in truth that we have done our very best to make this earth, our nation or even our neighbourhood a better place for our being here?

It is an undisputed fact that not one single one of us will leave this earth with even one material possession. It is a fact, whether we wish to believe it or not, that each of us will stand before the judgement throne of God, where we will be individually judged and held accountable for our thoughts and deeds here on earth. Will we be rewarded by eternal peace and joy or will we be committed to an eternity of pain and suffering such as no one could imagine?

Government has been given the trust and responsibility of representing all of the people, not just a select segment of our society. Those individuals who choose to shirk or take their responsibility lightly will pay a very heavy price in turn. Government, business and labour must work together to stop the present course towards strife and destruction. Each is given the responsibility to work towards a common solution which will best represent and serve Canadians as a whole, not just the chosen few.

If this cannot be accomplished, if we refuse to even try to compromise and find a neutrality beneficial to all, we can and will all be held responsible for the possibility of civil war and the anarchy which follows. We will be forced to revert to a Stone Age attitude where each individual will feel responsible only to himself, will only care for his own personal wellbeing. If you think this is a joke or couldn't possibly happen here, think again and take a good long look at what is happening and has happened in other parts of the world. We can and we

must make the effort to work together and it must be started by those who campaigned for government office with their promises of representation for all, whom we have honoured and placed our faith and trust in. Failure is not an option.

When our MPs step forward with the courage to represent us, they should not be chastised or dismissed from office. This is not part of the democratic process which I have been brought up to trust and believe in, nor do I recall, in over 30 years of casting my ballot, voting for a tyrannical, dictatorial style of government. Those representing the wishes of the people should not be degraded or humiliated by the leaders of their respective political parties for acting in a responsible manner. They should not be compelled to feel obligated to condone what they feel are irresponsible actions by their political leaders or unscrupulous influential business leaders.

Government, business and labour are together given the burden and responsibility of moulding and binding our nation together, not the freedom to do everything in their respective powers to divide it, as it now seems they are doing. This is treason, pure and simple, and must not be allowed to proceed. If this responsibility is too great a burden for any of those to whom it is given, each should pray to God for the moral decency and courage to vacate their position and allow someone to replace them who does have the courage and fortitude to represent the good of the whole of our country.

With responsible and trustworthy leadership, we can be the greatest nation on the face of the earth and not just the wannabes that we now are. Working together as a responsible, caring nation, we can all hold our heads high and be proud to be Canadian and free. We cannot, we must not, accept or tolerate division of our country. Though we do have, and no doubt always will have, differences of personal opinion, we must strive to find the common ground on which to stand and rebuild that which has so thoughtlessly been destroyed in our country and our moral makeup.

Business does have the right to expect to be able to realize some profits from their respective businesses. With this, they are obligated to pay a fair and equitable wage to those they employ. They are also obligated to use every means at their disposal to ensure a healthy, safe and care-free environment to their employees and to ensure them of adequate compensation should they be unfortunate enough to be injured on the job.

Labour has the right to expect reasonable pay for performance of labour. Payment should be consistent with the type of labour involved. With this, labour is under the obligation to work for the employer to the best of his or her ability. They must ensure that their work is of the highest quality they can produce and must strive to assist in every way their respective employers that they might achieve a reasonable profit margin.

It is the responsibility of the government to do all in its power to maintain the spirit of cooperation between business and labour. Tyranny and dictatorship cannot, must not and will not be acceptable in our supposed democratic society. Division can only breed strife, hardship and all the other atrocities we witness from other countries. We must unite together as a complete

nation working towards a common goal, namely, the preservation of our country, meeting the needs of all of the people, and ensuring that everyone has the right to enjoy life, liberty and the pursuit of happiness. Together we can do it; divided we will fail miserably.

The Chair: Thank you. That leaves us three and a half minutes per caucus, and this time the questioning will commence with the official opposition.

Mr Hoy: Good morning. Thank you for your presentation. You discussed a great many things this morning and I want to touch on at least one. You talked about work and some historical points to it. I think we have to remember a great many things as we look at legislation. I can recall the stories told to me by my uncles who dearly wanted to work and during the Depression rode to the western provinces looking for that very work. People want to be employed and they will go to great lengths to find work. Sadly, at that time the people from the west were coming to Ontario looking for the work they thought was here; people were passing each other in the night, and in the daytime, and there wasn't any work in either area. That's Depression time. Since then, we've developed a safety net where hopefully we can help the people under certain employment conditions.

We move to today where we do have certain safety nets in place. I'm meeting people who want to work, there's no doubt about it, but they want meaningful work. Maybe in the short term they would accept some work that is not of their choosing, we'll say, but most of them want to work and they want meaningful work that would be the type of work they'd be proud to put down on a résumé when they actually get to the place they do want to work, presumably for many, many years. I think that's something we have to remember. These people are looking for work they would be proud enough to put on their résumé as they move forward. I'm not going to pick on any particular type of work that they might not choose to do because, admittedly, there are people doing that now who have done it all their lives and are proud of what they do.

I appreciate your comments. You made comments in a great number of areas, and for all of us here they were very good reminders.

Mr Vandette: Thank you, sir.

1120

Mr Martin: Thank you very much for coming today and challenging us in the way you have. It helps us put some context around the legislation we have in front of us and the whole agenda of this government, because if we don't put it into context it's difficult to see how it all fits and how it ultimately affects people. Certainly we are at a time in our province, in our country, when some courageous leadership is required, is called for.

We're entering a new millennium, and as you suggested in your presentation, the leaders who brought Canada to fruition at its birth were people of courage who were willing and able to dream and had a vision as to what Canada would be like. I'm sure then, as today, they recognized that the greatest resource we have — and this province is rich in resources — are the people who live and work and choose to make Ontario home. Anything we do has to be held up to that screen: How does

it affect people, particularly those people who are the base, the root of all the communities in which we choose to live and stay from one generation to the next, and contribute with their skill and ability and with the education they acquire?

I suggest to you that this piece of legislation is not about that. This piece of legislation is about giving an edge, cutting off a corner for what's often referred to as bad bosses out there, people who would take advantage of good people, who would want standards lowered so they can even take advantage of their competition. We know there are lots of good bosses out there. There are lots of workplaces where workers are respected and educated and treated, in terms of health and safety, with the best that's available in education. What this legislation does in effect is create a situation where they also will be under great stress to compete and to maintain the standards they have put in place for themselves, which in most cases are above and beyond what's in law and legislation.

I really would like to believe some of what I heard from the members across the way here by way of what they think this legislation is about, because they do say some things that make a lot of sense from time to time. Protecting those who are most vulnerable — that's what we're all about and that's what this should be about. But their track record so far belies that. It doesn't support that that is what they're about.

When I woke up last year in July to the news that they had taken 22% out of the income of the most vulnerable and the poor in this province and in this community, I was shocked. I knew they said they were going to do it — it was in the Common Sense Revolution and they talked about it during the election — but the fact that they really did it, I have to say, was a shock. It removed effectively \$2 million per month out of the economy of this community, and since then they've laid off health workers and social workers and teachers, people who have spent most of their lives investing in the knowledge they have and their ability to do the job well, and a base of worker we need, as everybody knows in this community, to maintain a civilized society, to take care of each other. The health care system you mentioned, and we know what's happening to that.

I suggest to you that this government should be using the scarce resources — and we heard Mr Shea on a couple of occasions this morning talk about the scarce resources — in more appropriate ways to help people rather than introducing legislation such as we have before us today. I suggest that they should get on with the promise they made in the election to create 750,000 new jobs, because if you give people jobs you help people help themselves and you help communities. Unless they can show me that they are sincere about trying to help workers with this legislation, I suggest that they withdraw this legislation and get on with the more important work of creating work for people and improving the economy.

My question for you as an injured worker is, if you could suggest to the government what's more important, maybe continuing with this legislation and improving the standards or something else, what would you suggest?

Mr Vandette: As you just mentioned, people working for someone have the right to expect a reasonable wage.

Why should I, if I'm working and paying taxes — I have representatives in government — have to go and hire a cotton-picking lawyer, a high-priced lawyer, to get wages I've earned? I have a right to expect those wages. I have a right to expect health care that I'm paying for. Why should I have to do anything like that? Yet regulation that were set in place to protect my rights, to protect my wages, to protect my right to live, are being taken away. They're downgraded. I'm being cut up a little bit at a time into something less than you'd find on a street corner.

Mr Martin: I suspect you don't think this piece of legislation is going help you achieve that.

Mr Vandette: It's not going to help anything. If you can't enforce what already is here, how are you going to enforce something that's only half as strong?

Mr O'Toole: I have to start by apologizing. I didn't catch your name at the beginning.

Mr Vandette: My name is Del Vandette.

Mr O'Toole: I'm very pleased, Del, to hear your very sensitive historic overview of not only Ontario but indeed Canada, perhaps the world. If we look to our foundations, as you said, perhaps the founder of Canada, John A. Macdonald, was most notably known for being an artful politician, which he described as "the art of compromise." Do you agree that that's what politics is really, trying to find that balance?

Mr Vandette: That's life; it's not just politics.

Mr O'Toole: And I espouse that same view myself. You're always trying to move from the extremes of individual freedom to collective slavery, dictatorship. That's the balance. You're trying to find where the individual's rights and entitlements begin and where my enslavement through taxes ends.

You talked briefly about the profit disease and you made broad reference to the public sector in that, that health care is under threat. Federally, it's been a debate; it's on the front page of the paper this morning. On education, you talked about our children being less than up to the challenges, as I heard you say it. You don't have much confidence in today's generation.

Mr Vandette: No, I don't.

Mr O'Toole: Would that be indicative that perhaps the educational system needs some significant repair? That's what I take from your message.

Mr Vandette: I just came out of two years of returning back to the educational system. I completed my high school education, which I'm proud of.

Mr O'Toole: Good for you.

Mr Vandette: In working with and around the young people at the school, there's absolutely no respect for the adults, for the teachers, for themselves, for their friends.

Mr O'Toole: When you used the term "God help us," which I feel was kind of a plea, a sort of yearning for better times — again that's the balance you want. Individuals have responsibilities. Society's not responsible individually. Those children have duties, and with rights go responsibility. It's a balance.

Mr Vandette: It is.

Mr O'Toole: I don't think Big Brother or the government should solve all problems. Individuals, those most vulnerable, we have a duty to protect. We have a duty as

a government to the minimum standards, not only in pay equity, employment equity, employment standards. We have a duty. I think many of the unions, in your collective agreements, enshrine those rights and responsibilities within the language of those particular workplaces, and I think the individual workplace far exceeds the provincial workplace. It's unique to each workplace. Algoma Steel is a perfect example where the union and the leadership of both management and union restructured and took over a company that was otherwise failing. That's the responsibility and that's the balance we're talking about.

You basically recounted being mistreated by the current system — that's what I heard you say — that you felt betrayed and almost suicidal at certain points through your last five or 10 years. It has been a tough five or 10 years. I'd have to agree with you. I think there are good bosses and bad bosses, good employees and bad employees, and you're always looking for that arbitrated fair balance. That's what this legislation is about. It's trying to focus the resources. If you look — and I could give you statistics either now or after the meeting, if you'd like to discuss it — do you think the current system is working when it's only paying 25 cents on the dollar owed to that particular employee who's already worked and is only getting 25 cents out of the dollar? Don't you think we, as a government, have a responsibility? You used the term "no greater honour than to serve," and that's exactly what my motive is, is to focus the resources where they're most needed. When I see legislation that's only paying 25% on the dollar, I'd say that system needs an examination.

It's people like yourself who are calling on us as a government to take those tough decisions and make the system respond to the people who most need the help. Injured workers are probably the top of the list. Those very large international unions are well positioned to take care of themselves, wouldn't you agree, to a large extent?

Mr Vandette: Somewhat, yes.

Mr O'Toole: I'm pleased with your presentation. It's very sensitive. You looked at the history from where we were to where we are and what can we do to improve to the future. I really appreciate your coming forward this morning, and I saw you listening there all morning as well.

Mr Vandette: Thank you very much.

The Chair: Thank you, Mr Vandette. We appreciate your time to make a presentation before us here today.

1130

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 16

The Chair: That leads us now to another group that's accommodated a change in schedule. We had a cancellation this morning, and we appreciate the Canadian Union of Public Employees Local 16 altering their spot in the agenda and helping us flesh out the morning. Good morning to you both. Just as a reminder, we have 30 minutes for you to divide as you see fit between either presentation time or question-and-answer period.

Ms Della Case: Mr Chairperson, honourable members, my name is Della Case. I'm the group vice-president of

our plant department, CUPE Local 16. I'm presenting on behalf of Lynda McFarling. She's currently employed in a unionized workplace and is also the recording secretary of CUPE Local 16.

First of all, I would like to thank you for giving me this opportunity to do this presentation today. This is a short presentation, as you can see, and it's on a personal note. After the presentation, Lynda and I will try to answer any questions you may have regarding her personal story.

This true story involves a violation of the Employment Standards Act by Lynda's former employer. In approximately 1986, Lynda commenced employment with a non-unionized workplace. The establishment, which is this Ramada Inn, was and is still owned by Tony Ruscio. Within a period of four and a half years, Lynda held the position of banquet waitress, then she was promoted to hostess and finally to a more responsible position of assistant manager of catering, which included duty managing. During this time, Lynda felt confident and secure in her position.

In the spring of 1991, Lynda went to work at 9 in the morning and worked until approximately 2 in the morning the following day. These long hours were not unusual, as she had worked this and longer hours on previous occasions. At approximately 11:30 that night she was approached by Tony Ruscio and was informed that she was not to report to work the next day as she was being laid off due to downsizing. The following day the manager of catering called Lynda to request her assistance as a favour to him to help prepare the payroll for the banquet department. Being a cooperative person, she said would, even knowing she was laid off by Mr Ruscio.

Within a couple of days of being laid off, Lynda reported the incident to the department of labour, as she wondered what recourse she had. The department of labour indicated that Mr Ruscio had violated the Employment Standards Act because he had not given her proper notice — clause 40(d), four weeks' notice, and clause 40(7)(a). They informed her that Mr Ruscio had a required number of weeks to recall her or pay her severance pay. If he did not comply within the required time, then she was to return to them and file a formal complaint. He did not comply.

Once the complaint was filed, the labour board contacted Mr Ruscio and informed him that he had to pay Lynda four and a half weeks' severance pay. Following this, Mr Ruscio had his manager of catering call Lynda to see if he could cut a deal. He asked her if she could accept two weeks' severance pay instead of her entitled four and a half weeks, as times were hard. Lynda replied negatively to the lesser amount as she knew what she was entitled to under the employment standards, which she did receive at a later date. Shortly after refusing the lesser amount from Mr Ruscio, Lynda became victimized, as she was told she could no longer set foot on Mr Ruscio's property, which meant she could no longer have coffee or lunch with her former co-workers.

This story is one of many examples of why the employment standards laws are so important to preserve. Without these laws, employees will be constantly subjected to uncaring employers, with no recourse. This does

not make for a fair and equal society to live in. We hope you are listening to all our concerns as they will affect the dignity and the future of all working people, which belongs to our children and our grandchildren.

The Acting Chair (Mr Ted Chudleigh): Thank you very much. That leaves us with about 25 minutes or about eight minutes per caucus, and we start with the third party.

Mr Martin: I appreciate how difficult it is to come before a group such as us, even to present a formal presentation that deals with some of the more technical aspects of bills etc, but to come and tell a personal story has to be even more difficult. For you to come today and to share this with us I think is an act of courage. But it's not a surprise or unexpected, because there are a lot of courageous, hardworking, caring and hurting individuals out there who have been caught in the machinations of the system and not dealt with in a fair and kind and respectful manner.

It's good that this committee hears stories such as yours, because then we're able to put a face on how legislation already in place is working, or not working, and out of that perhaps we can begin to decide what it is we can do to make it better. We want to do everything we can to improve legislation so it helps people. We had a story earlier this morning from a gentleman who came forward and told a story, and it was equally as helpful as yours.

Is your gut feeling — the story you told was on a very personal level — having looked at this bill, having prepared to be here this morning and perhaps having talked to some folks about it, that it is going to be helpful or unhelpful in light of your experience and perhaps the experience of others out there who may find themselves in the same boat as you?

Ms Lynda McFarling: I don't believe it's going to be helpful. I'm not exactly sure of everything in the bill, I'll have to admit that, but if it wasn't there for me when I — that was how many years ago, four or five years ago. Maybe because I grew up in a union family, I knew I had some rights because I was taught it all my life. But there are people out there who may not know their rights, and if they're not given the employment standards, people are going to lose. "Well, go to court" — trust me, a single mother with two children cannot afford to go to court and pay her legal fees. If employment standards hadn't been there to help me, I guess Mr Ruscio would have won and I would have been out four and a half weeks' wages.

Mr Martin: You certainly make a good point that's specific to the bill. With the fact that we're going to lose the resource of that employment standards office in many substantial ways, you would be forced to either fall back on the resources of your union or your own resources. I mentioned earlier this morning that two thirds to three quarters of the working population in Ontario today are not unionized, so it falls back on their —

Ms McFarling: See, that's the thing. When I worked at Ramada Inn, it was non-unionized. I believe now there is a union in here finally, which I think is great, but then I didn't have a union to fall back on. I knew where to go because of my family background, hearing it and know-

ing about some labour law because my father was very involved. I knew I could go to the labour board or the employment standards office and find out what was going on, but probably the person next to me who worked here wouldn't have known that.

1140

Mr Christopherson: I also want to thank you for coming forward and sharing your personal story. I accept that you're not suggesting that you're here as an expert on Bill 49 but merely someone who has experienced a real-life situation under the Employment Standards Act and wanted to share that with us, and I accept that context of your presentation.

I'd be interested to hear your reaction, though — you're now active in the labour movement and have some sense of not only what your rights are but how government works and how it doesn't work etc. Part of the impact of Bill 49 will be to allow the government, because there will be fewer rights enforced under the Employment Standards Act, to lay off at least 45 employment standards officers. From a commonsense point of view — a phrase we hear a lot these days — do you think having 45 fewer employment standards officers will make for greater or less protection for the most vulnerable workers who need to rely on the Employment Standards Act to have their rights enforced?

Ms McFarling: Less, far less protection. It's just ridiculous. I am lucky because I have a union to help me now, but for anybody out there who doesn't, not to have anybody here in Sault Ste Marie — even if they even take them out of Sault Ste Marie and say, "Oh, we'll put them in North Bay or Sudbury," how are we going to access them?

Mr Christopherson: What we're attempting to point out with these hearings is that this all fits. By removing rights from the law and downloading the enforcement of whatever is left as much as possible down to the unions or to force people to go into the courts, this government doesn't have to employ as many employment standards officers; therefore they can find the \$40 million that they're taking out of the Ministry of Labour which goes towards paying that ministry's share of the 30% tax cut, which of course is benefiting the most wealthy. All of this fits together.

The losers in all of it — and we've seen it without doubt in every community we've been in, in terms of the overwhelming response — the real losers in this are the workers who no longer have their rights enforced, and the real winners are the ones who already have the power and the influence, who will have greater influence and power and at the end of the day will have more money because they'll benefit most from the 30% tax cut.

By bringing forward your story, I think you've helped other Ontarians understand exactly what's at play here. By allowing everyone to comment on the whole game plan, we're able to see that this is not an isolated bill in terms of taking away rights; it's a calculated agenda that at the end of the day leaves those who have little much worse off. In fact, one person, a labour leader — it's a great quote — said it's like Hood Robin: You rob from the poor and legislate for the rich. I want to thank you very much for coming forward today.

Mr O'Toole: Thank you very much for your particular incident report. Just to clarify a few details, I'd appreciate that, you started, I gather, Lynda, in 1986 with Ramada?

Ms McFarling: Approximately, yes.

Mr O'Toole: It was new at that time, probably. Were you full-time or part-time?

Ms McFarling: Full-time.

Mr O'Toole: You were full-time right through till 1991. At that time, there was no representation; you were sort of on your own. As I understand the recounted story, you moved through a number of progressively more senior positions. Was there any particular reason? Were they actually downsizing the organization? Were there other people involved in this?

Ms McFarling: Yes, a couple of porters, maybe, got laid off.

Mr O'Toole: Was it done on a seniority basis?

Ms McFarling: No.

Mr O'Toole: No? I think you're right. We have to look at the workplace, each individual workplace, whether it's unionized or not. I think those duties follow. Would you classify them as a good employer or bad employer overall?

Ms McFarling: Overall?

Mr O'Toole: Yes. You stayed there five years.

Ms McFarling: I know I stayed there for five years. More or less because I needed a job, I stayed for five years. I had certain bosses that I really liked working for, and then there were others.

Mr O'Toole: Trying to separate the two situations, in those five years were you paid the appropriate amount of money for the work performed?

Ms McFarling: Yes, until they put me on salary.

Mr O'Toole: So I guess there was an infraction at the end on the severance disagreement thing. I'm trying to understand it.

Ms McFarling: I would say yes.

Mr O'Toole: That was the claim, was it?

Ms McFarling: Well, he wouldn't pay it. Yes, that was the claim.

Mr O'Toole: But he tried to make a deal of some settlement.

Ms McFarling: Times were hard. He knew times were hard for me because I was single, two children.

Mr O'Toole: I'm glad that you were able to get help. I think that the Employment Standards Act isn't being diminished. If you look at the time limit, for example, from two years to six months, what that's trying to do is — people like yourself in different sectors of the economy, home work, whatever — bring those cases forward more quickly to not allow an employer to take advantage of not just you but a whole string of employees over a two-year pipeline, to bring the issues forward more quickly and bring prosecution more quickly and focus resources.

Phase two is that once you have that judgement on that particular employer, you can spend your time on the collections, which is currently in disarray, it's failing, it actually isn't helping the people. It's fine to get the judgement against the particular employer, but really we're not collecting the judgements, and we're really, I believe, focusing the resources. I ask you if you think

that's the right thing to be doing, not from a political kind of perspective. We really want to fix this for the right reasons. Your story being the one we're discussing, don't you think that getting to the issue quicker is important?

Ms McFarling: I got to the issue quickly, though. I just don't think it's right to put limitations on it. I knew what my rights were, but if somebody came along and told me a story and I said, "Jeez, you could have gone to the employment standards about that," and then they would say, "Oh, yeah, but it was like seven months ago" — too bad.

Mr O'Toole: These public hearings are part of that education process, which have a duty to do.

Ms McFarling: Exactly, and I know people are supposed to know what their rights are, but not everybody does.

Mr O'Toole: It's difficult. A lot of people watch television. But anyway, thank you very much.

Mr Baird: Thank you very much for your presentation. We appreciate your coming. When you went through the process, I think it was in 1991, did you eventually get the four and a half weeks that were coming?

Ms McFarling: Yes, definitely.

Mr Baird: Terrific. I guess you're a very small minority, not only to get something back but to get the entire amount back. We're only collecting 25 cents on the dollar now, and that was the same under the last government or two. Even then the last government, this government, governments of all parties, because of bankruptcies, insolvencies and so forth, have had to ask workers to settle for less than that. So to receive 100% is — I hate to use the word "fortunate," but with the way the current rules are, it is. We want to try to improve that situation.

Even once someone knows about the act, complains, it's investigated and an order is issued the collection has been a big part of the problem. We know the previous government disbanded the entire collections unit, 100% cut, discharged all the employees there and just said, "Listen, the existing employment standards officers can take care of it," with no plan for training, absolutely nothing. I guess that's part of our plan, to bring in professionals who go after what I would call these deadbeat companies which aren't accepting the responsibility to treat their workers fairly. I know that's a concern for us. Our view is that we can't tinker with it, we've got to ensure that we can deliver on it, and just changing the status quo won't work.

We heard from one union leader yesterday who said he has a 100% collection rate. He is able to collect 100% because under his collective agreement there are mechanisms for him to get it. He delivers 100% for his workers, and I was pleased to note that.

We heard from one individual this morning who, like you, gave a very personal story that was good. This fellow was from Algoma Steel, I believe, and he said, "The large unions are capable of taking care of their members." I know the Steelworkers, a very well-respected union, do a terrific job for their members. It's part of our priority to say, "Listen, where there is a unionized environment" — as you mentioned, where you

are now in a union, CUPE is the biggest union in the country and very well respected. My father was a member for more than 25 years. If they've got the defender — we're getting very few requests from Employment Standards Act violations there. Let those advocates — one presenter said yesterday they're the best ones; they're on the ground and they know the situation to free up the resources to help those workers who are most vulnerable and might not even be in a position to know about the act. That's something we've heard from around the province, in what ways we can help communicate better what the standards are, not to employers so much but to the workers themselves because they'll be the best defenders of their own rights.

Thank you very much for your presentation. We really appreciate it.

1150

Mr Duncan: Thank you for your presentation. Often-times a vivid example of what can go wrong in a system is a good reminder to those who write public policy about what is good and what is bad in the system.

I just want to address a couple of issues and perhaps ask your opinion. Just to reinforce, you had indicated it is your view that these amendments proposed by the government reduce minimum standards. Is that correct?

Ms McFarling: I'm not sure of the act. As far as I'm concerned, if they're going to take away some of the rights from employment standards, then yes.

Mr Duncan: So your concern is that despite what the members of the government have said, this won't make it easier for somebody who was in your position; it'll make it more difficult.

Ms McFarling: I think it's going to make it more difficult and more expensive. I don't believe what the government is saying, that this is all they're going to do. They're liable to start tearing more of it apart. I think it may be improved on but not made less.

Mr Duncan: You're a CUPE recording secretary for the local, so you've been in a non-union environment and now you're obviously working in a unionized environment with that protection. It would be our observation that this statute, the Employment Standards Act and the amendments proposed to it, is much more important from the perspective of an unorganized worker who does not have the backing of a union. Would that be your view as well, having been in both?

Ms McFarling: Because we have protection, I think yes. It's for people who don't have unions to back them and people who don't understand. I'm not that knowledgeable on the bill anyway, but people who don't have protection need it.

Mr Duncan: It would be our view that they are the people we are most concerned with. I think we need to address a couple of things. There were statements made by the gentleman from the injured workers' group, Del, and just now. First of all this government — I think the term used was "trying to find a balance" — has effectively gutted pay equity, made it more difficult for the unorganized to organize, reduced health and safety and cut funding for the enforcement of health and safety and employment standards.

They've been sitting here smugly charging the previous government for eliminating the collection aspect of the

Employment Standards Act, neglecting to say that they attempted to deal with it in other ways: (1) by creating a wage protection fund, and (2) by reassigning the work to employment standards officers. They submit that a delegation yesterday said he collects 100% of settlements, and neglected to mention that was a public sector representative.

We're of the view that yes, you should always be looking to find efficiencies and make better not only the enforcement of employment standards but the administration of the act itself. What we see is a deliberate attempt to undermine that, and those who work in the field have repeatedly said that. We also see this as yet another half-baked attempt to deal with a very complicated piece of legislation that ultimately doesn't even deal with a number of real concerns that go beyond the changes in minimum standards, the reduction in minimum standards they are proposing today.

I concur that this government is very much Robin Hood in reverse, taking from the poor and vulnerable and giving to the rich and powerful, and not finding balance, as has been suggested. The real agenda here goes well beyond administration. In fact, the logical inconsistency in the amendments has been borne out by a number of delegations.

Without commenting on the specifics of your situation and on what you experienced I can say that we have heard other stories at these committee hearings, we have heard stories in our constituency offices and we've read in the newspapers that our objective, if it is to improve enforcement, isn't being met by these amendments. I would concur with you that in the government's attempt to deal with its efficiency issues it is, in my view, making it more difficult, particularly for the unorganized, to get fair treatment and fair enforcement.

If the government says that 96% of claims are for less than \$10,000, what's the big deal? Why do you need a maximum? If the government isn't going to set a minimum — why don't they say what the minimum is? Why do they need it? Why should there be a minimum? We've had business organizations in here time and again suggesting that they like most of what they see, that they concur with the notion of getting greater efficiency, and we concur with that. Some aspects of what the government is suggesting we think are right, and we shouldn't just bury our heads in the sand and pretend that everything is well. It's not.

But if the majority of employers in this province are good employers and this statute only affects those bad employers, then what's the big deal? As a former employer who tried to meet obligations, I can tell you this piece of legislation was probably the least intrusive in terms of red tape and burden. You only dealt with it when somebody was coming on or going off the payroll.

Our view is that you're absolutely right. I thank you on behalf of the official opposition, the Liberal caucus, for sharing your personal story with us and helping us to remember that despite all this talk, it's real people who are affected by this in their day-to-day lives.

You as a government have an obligation to listen to these people and understand what they're saying to you and realize there have to be certain minimums in place to protect people.

The Chair: Thank you both for taking the time to appear before us. We appreciate it.

That concludes our morning session. I guess a group discovered they had two people who had independently requested spots, so the 1 o'clock session has been cancelled; it was a duplicate of the 2 o'clock. The committee stands recessed until 1:30.

The committee recessed from 1158 to 1331.

SAULT STE MARIE BUSINESS AND PROFESSIONAL WOMEN'S CLUB

The Chair: The first group up this afternoon is the Sault Ste Marie Business and Professional Women's Club. Good afternoon. Welcome to the committee.

Ms Shirley Mantyla: Good afternoon. Sharon Selkirk, our Canadian immediate past president, will do the body of our presentation and Marlene Mathieu and I will make a few opening comments.

My name is Shirley Mantyla and I am the president of the Sault Ste Marie Business and Professional Women's Club. In 1994, downsizing challenged me to start up a small computer consulting business. I also teach computer training on a contract basis.

We welcome you to Sault Ste Marie today and appreciate the opportunity to present our input regarding the impending changes to the Employment Standards Act. However, we are concerned that the attention needed for this important issue is perceptually diminished with the other government hearings, on housing, in our community on the same day. The growing trend of regionalization within media with smaller news outlets in local markets and limited coverage does not lessen the importance of crucial issues. It is my concern that the public may not be getting the full benefit of these hearings as they cross the province.

As a non-partisan, non-sectarian, non-profit organization promoting the interests of working women, it's been our good fortune to meet with each government of the day to discuss our resolutions. Sault Ste Marie is one of the many clubs of Ontario and we feel the honour to have local members serving in all levels of our worldwide organization. Right now, I would like to turn this over to Marlene Mathieu, BPW Ontario's District 6 director.

Ms Marlene Mathieu: Hello, everyone. As director for District 6, I represent Sudbury, North Bay, Kirkland Lake, the Tri-town area and Sault Ste Marie. Our five clubs in northern Ontario are a part of the larger Ontario organization with 30 clubs. Our clubs have spent many years working on improving the economic status of working women. We have a large base to draw our research material from and compare this material with other provinces under our Canadian federation.

Sharon Selkirk, our Canadian immediate past president, who just turned over the presidency this past Saturday, is also international resolutions chair for our international federation, which covers more than 100 countries. Employment conditions worldwide have been worked on by our organization for decades. At our international congress just this July in Italy, we were pleased that Sharon was voted in as international secretary for a three-year term. We now turn this over to Sharon Selkirk with

our concerns regarding the changes to the Employment Standards Act.

Ms Sharon Selkirk: It gives me great pleasure to be here to present our concerns from the BPW members of Ontario. Over the years BPW clubs throughout Canada have presented resolutions addressing employment standards in the form of briefs to both the provincial and federal governments. A sampling of our resolutions addressing employment conditions and labour issues are included in appendices A and B of our handout.

The Canadian Federation of Business and Professional Women's Clubs was incorporated in June 1930 and is a non-sectarian, non-partisan, non-profit organization. It is composed of more than 80 clubs in Canada and approximately 2,500 members. The Sault Ste Marie club is one of its member clubs.

Our primary concern is improvement of the status of women employed in Canada, and for more than 60 years BPW has worked to improve the economic, employment and social conditions of women; to stimulate interest in federal, provincial and municipal affairs; to encourage women to participate in the business of government at all levels; and to assist women and girls to acquire education and prepare for employment. We represent a diverse group of women employed in the professions and businesses in both the public and private sectors.

The highlight of the Fourth World Conference for Women in Beijing, at which I represented BPW Canada's part of the government NGO team, was when Canada was chosen from over 100 countries and presented with the award by our international federation for the most achievements in women's issues in the last decade. These accomplishments were achieved by working closely with the governments in power at both the federal and provincial levels.

We are gravely concerned that recent and pending changes by all levels of government will erode our decades of progress. Of major concern to us are the proposed changes to the Employment Standards Act in Ontario. This act is designed to create a level playing field for all employers by setting minimum requirements for the protection of the majority of working people in Ontario. It specifies the rules governing minimum wages, overtime pay, vacation pay, equal pay for equal work, hours of work, pregnancy and paternal leaves, and notices of job loss.

The enforcement of the provisions of the act is somewhat inconsistent and ineffectual, as in cases which take years to be resolved while compliance orders served on employers are not enforced. Some of the areas in which enforcement is lax, such as maternity and parental leave, are of particular concern to women.

While Minister of Labour Elizabeth Witmer states that Bill 49 is just introducing simple administrative amendments to the Employment Standards Act to encourage compliance and simplify administration, we feel that the proposed changes will have long-range ramifications for working individuals in Ontario.

Today, as immediate past president and as a member of the Sault BPW, I come on behalf of the members of Ontario who have expressed their concerns about the long-term ramifications of the proposed changes on working individuals.

Women make up the majority of the workforce in Ontario, comprising a large number of the part-time workers. Many are employed in non-union positions in the service sector and small businesses and must handle complaints on their own. The majority of these workers face uncertainty as they have few benefits and limited resources to secure their futures.

For many years, there has been a concerted effort to encourage women to enter non-traditional occupations and managerial positions. The erosion of the ESA could position genders unfavourably against each other. We recognize that both men and women are challenged by the current economic times. We must work together to overcome these obstacles presented in the ESA changes.

The recent repealing of the Employment Equity Act and the possibility of major changes to the Pay Equity Act are of great concern to our members, as they have lobbied for this legislation for many years. Now the proposed changes to the Employment Standards Act further add to the concerns of the working women in Ontario, as women are often the targets of harassment and unfair treatment in the workplace.

Present legislation allows an employee up to two years following the violation to formally make a complaint against an employer. The proposed change limits the time period that an employee has to bring a grievance against an employer to six months. This change will have major consequences to many individuals.

1340

Today, with the present rate of unemployment, individuals are often afraid to initiate complaints against employers for fear of reprisal leading to dismissal. Many women in Ontario, especially those employed in small businesses and the service industry, feel they are unable to initiate any grievance procedures against their present employers. Their welfare is dependent on the retention of their present positions. They must continue working until other posts are secured. Thus, due to the limited job market, they are often forced to work under adverse conditions, enduring hardships and violations of their basic rights.

Our mandate includes eliminating all violence, especially against women and children. Statistics support the fact that often women endure years of abuse before they take some positive action to remove themselves from the offending situation. Similar scenarios are often seen in the workplace, as workers are reluctant to come to terms with the injustice. We would encourage the government to thoroughly investigate this often overlooked reality.

Under the proposed amendments, complaints against their respective employers must be issued within six months of the violation. The act states that only the past six months of the employer's practices will be considered during the investigation of the complaint. This limited time period forces the employees to choose between keeping silent to help ensure retention of their jobs or coming forward and risking the possibility of giving up their security. Even if they are fortunate in establishing new positions, it may be too late to initiate complaints against their former employer, as the violations occurred more than six months before.

Women form the majority of domestic and home workers, often live-ins, and part-time workers in Ontario today. Most of these workers are employed in non-union settings, with no support systems. Over the years, many of these employees have found themselves in situations where their wages are in arrears and they have no recourse but to remain on the job until something is secured. They are on a perpetual treadmill, with no foreseeable solution to their problems. These situations create undue hardship, as the workers do not have the resources necessary to seek new employment or to challenge their employers.

Limiting claims to a maximum of \$10,000 will not always compensate for the wages lost and the suffering endured by the employee. The employer is the winner in such cases, as any portion of the debt beyond the \$10,000 maximum is automatically and unfairly forgiven. Allowing this to happen encourages unscrupulous employers to continue such appalling practices.

As indicated before, many of the workers, especially those with no representation, cannot afford to even initiate a complaint, let alone decide to take their cases to court. Ontario legal aid is not available for employment law issues, leaving no government funding resources to assist with the engaging of professional counsel. Thus, the choice of taking the complaint to the Ministry of Labour or having it heard in the courts is not available to many Ontario workers. The cost of taking the matter to court is unattainable.

Further, if the outcome of the complaint filed with the Ministry of Labour is not satisfactory to the worker, unless the decision is made to withdraw the complaint within two weeks after it is initiated, there is no recourse. The worker is not entitled to pursue the matter further, even though the total amount of wages owing to the employee may be greater than the amount of settlement reached in the case. Two weeks is an unreasonable time frame to make such an important decision. One can hardly gather all the factual data necessary to effectually support the decision within such time constraints.

BPW has been aware of and worked on many of the same issues as the International Labour Organization for decades. Our joint work within the United Nations has addressed employment issues through human rights worldwide. We have long recognized the importance of organized labour for full- and part-time employees and have lobbied for a higher minimum wage and improved working conditions and benefits. Collective agreements are guidelines for all parties. With the proposed changes, union workers will no longer have access to the Ministry of Labour's enforcement procedures. We believe Bill 49 will eventually lead to lowering the working standards in Ontario. What will be the state of workplaces without any structure?

Time means money. Private collection agencies will want to bring closure to claims as soon as possible. With added harassment from these agencies, the claimants could feel intimidated and be forced into accepting incredibly low offers. How will this be monitored? How do we ensure that the claimants get the moneys due to them?

Today the job market is shifting and the number of people employed in small businesses and the non-unionized service sector is steadily climbing. These employees want to be sure their rights are protected. They want to be treated fairly and justly, receiving a fair wage for their services. They want to be assured that they have some recourse without reprisal if their employers fail to live up to their end of the commitment. When one's financial base is threatened, violence can escalate, many of the victims being women and children.

BPW Ontario's resolution 1996/07, which is shown in appendix A, asks the government to strengthen the power of the investigating officers to oblige employers to comply when in violation of the act and to require investigators to follow through and ensure that compliance orders are carried out. We have asked to improve training on gender bias in the workplace for employment standards adjudicators, for example, maternity leave and parental leave, and to shorten the length of time to investigate within 30 days and to resolve disputes within 12 months.

While a few of the items can be classified as house-keeping, Bill 49 disproportionately favours the employer and inversely reduces the rights of the employee. The greatest impact will be felt by women in low-paid jobs.

Over the past year, there have been numerous changes affecting the people in Ontario. Bill 49, while attempting to simplify the Employment Standards Act, is creating additional hardship for the majority of workers in Ontario.

The Chair: That leaves us about three and a half minutes per caucus for questioning. This time the questioning will commence with government members.

Mr Baird: Thank you very much for your presentation. We certainly appreciate the time you've taken to come out.

This is a two-stage approach. That's one thing I'd point out. This is the first phase. There's a complete review that will take approximately eight months. I think it points out many of the issues you pointed out. Obviously the participation of women in the workplace has changed dramatically over the last 20 years, and that's something that has to be reflected in the act. That certainly will be a big part of the review process.

I'm a member from eastern Ontario, but I read the other day that in the city of Toronto one out of five workers is working at home. Obviously that's gone up considerably in recent years, and the act has to reflect that.

One of the things you mentioned in your brief, near the end, with respect to collections, is the issue of forcing companies to comply. This has been a recurring theme throughout the province. We've heard pretty much consistently wherever we've gone that we've got to do a better job. We're now collecting only 25 cents on the dollar. Assuming our minister, Elizabeth Witmer, is not satisfied with this, we're certainly not prepared to go without a better try at it.

One of the provisions in the bill, as you know, would be to have collection agencies go after what I call deadbeat companies more aggressively. You mentioned other measures. What could I tell Minister Witmer

specifically that you would suggest we could do? I know both opposition parties have been in government in the past and I think there's certainly been an earnest attempt to try to collect more. I think we've got to do a better job, so I guess I'm completely with you there. What specific suggestions could I bring back to Elizabeth Witmer that you would have in terms of compliance?

Ms Selkirk: Collection agencies, to me, have a stigma around them.

Mr Baird: They go after deadbeats.

Ms Selkirk: They may go after deadbeats, but they also deal with the employee who's putting in the complaint and that could often have an adverse effect on them, forcing them to feel it necessary to come to closure before they really have reached a proper agreement. There's just that stigma attached with collection agencies that I think people would find unnerving.

Mr Baird: That of course wouldn't be a change from the status quo. I've checked the figures for the last number of years and of the \$16 million that we're collecting for workers, which is the 25 cents on the dollar, about \$3.5 million to \$5.5 million of that is settled at less than the employee was entitled to. It certainly does happen now, so the collection agencies wouldn't bring that about.

1350

Your point about the stigma, though, I think is a very valid one. When you have a collection agency legitimately going after you, it means you've done something wrong as a consumer. If it puts a stigma on a company that's failed to accept its responsibilities, to live up to its obligation to its workers, I have no problem with that whatsoever, because I think they should have that stigma.

The Chair: Moving to the official opposition.

Mr Jean-Marc Lalonde (Prescott and Russell): I want to thank the three women for coming in front of this panel today. There are a few points that you've touched on in your brief here. If I go to the proposed change in the time limit that an employee has to bring a grievance, I fully agree with you that in today's world it's very hard to find another job. So people will have to suffer all that time and then cannot go back any further than six months.

There's an area in the employment standards that is really going to affect the woman: the fact that the employer will be able to ask the employees to work more than 44 hours now before he gets his overtime. An arrangement could be made between the employer and the employee, let's say, to work 48 or 54 hours. Knowing that the woman plays a big role in the family, do you think this will have an effect on the quality of life in the family?

Ms Selkirk: Personally, it would have a big effect on my quality of life in my family, being forced to work more than a 40-hour week, which I have now. I imagine most of our members would feel the same way, that it would definitely have an adverse effect on their family life. We are promoting quality of family life within our organization. It's been one of the platforms that we fought for even in Beijing, so I feel that is very important, the family unit.

Mr Lalonde: During your dealings, have you had anybody in your organization who had to make an appeal

in the past who went over the \$10,000 limit that we are imposing at the present time in the bill for collection process?

Ms Selkirk: I don't know anyone personally in our organization, but I know of incidents that have been brought forward at our various meetings citing incidents. A lot of them have been immigrant women who have really suffered for quite a long period of time because they had no recourse whatsoever, and the wages owing were much more than \$10,000.

Mr Lalonde: The government is saying that only 4% of the appeals at the present time are for amounts that are over \$10,000. I just remember when I met a district engineer at the Ministry of Transportation. I was telling the district engineer that there was an area which was very dangerous for drivers, and he said, "Well, it doesn't matter; 95% are regular commuters." He forgot about the other 5%. In this case, it's the 4% that are higher than the \$10,000 that we'll be forgetting in this new act.

Mr Christopherson: Thank you very much for your presentation. The work of your organization is well known and well respected and we appreciate your taking the time to be here today.

I note that on page 8 you make the very direct statement, "The greatest impact will be felt by women in low-paid jobs."

You also point out in your historical information section that women have been disproportionately affected by a number of measures. You mentioned repealing of the Employment Equity Act and the changes to the Pay Equity Act. To that I would add: the 22% cut to the poorest in our province, which are mainly families headed up by women who are on their own; the cutting of support to battered women's programs; the recent announcement of folding up all the local family support programs in all of our communities. All of these things show that we have an agenda unfolding by this government that disproportionately, negatively affects women, and it's really important that you and others come forward and make that case.

I want to draw attention to one area that you spent some time on, the limitation periods. You talk about the fact that "Individuals are often afraid to initiate complaints against employers for fear of reprisal leading to dismissal." I really need for you to talk to the government members because they will not move on this issue, they will not address the issue of the fact that the reason people don't file — 90% of the claims are after people have left the employment of the offending employer — is because they were afraid to. They keep reiterating and mimicking the words of the minister that this is all to streamline things and do all these things and they refuse to talk about — or say you're wrong. I'd love to hear one of them, when their turn comes, say that you are wrong, people aren't afraid, because that is the case.

We had a chamber of commerce representative in Kitchener who said that it will stop a person from "sitting on his can and mulling it over," that somehow the time lines are being abused. The fact of the matter is that by cutting to just six months, people will not make claims because they won't leave the job because they're afraid. They're afraid to make a claim while they're there. Will

you please tell the government members that's why there's a loss to working people, particularly women. They just don't seem to get it.

Ms Selkirk: I'm sure we will reinforce your thoughts, because those are our thoughts. We will be presenting a brief to the provincial government and those thoughts will be definitely within our brief.

Mr Christopherson: I'm going to start pushing from here on in and every time somebody raises it, like these people, I'm going to ask the government to either say that you disagree with them, whoever is sitting there, and that this is all just make-believe, or admit you're making a horrendous mistake and that you are going to hurt people and will agree to recommend to the minister to change the law at the end of these hearings. I think it's time we started to take this thing head-on.

The Chair: Thank you all for taking the time to make a presentation before us here today. We appreciate it very much.

SAULT AND DISTRICT SOCIAL JUSTICE COALITION

The Chair: That leads us now to the Sault and District Social Justice Coalition. Welcome to the committee. We have 30 minutes to be divided as you see fit.

Ms Renata Fisher: I'm Renata Fisher and I'm very pleased to be here this afternoon. Can everybody hear me? I'm presenting this submission on behalf of the Sault and District Social Justice Coalition, which is based in Sault Ste Marie. We have been in existence for approximately two and one half years and comprise around 200 members, including both grass-roots community groups and individuals. The bulk of our membership, however, is low-income individuals, women and students, and the focus of our work so far has been on poverty issues and issues affecting women and children.

We would like to speak to those amendments that would affect the most vulnerable workers, that is, students, women and others in unorganized workplaces and workers who are working in the low-end wage scale. I feel that it is important to consider and do an analysis of the impact of these proposed changes to the Employment Standards Act in the broad context of all the other changes that are affecting our most vulnerable workers, especially women and students.

As if they haven't already been assaulted enough with the impact of all the cuts, they will become even more vulnerable. Those working in organized workplaces and covered under collective agreements already have more than the minimum protections. Federal cuts to UI, provincial cuts to social assistance, the end of employment equity and pay equity, the possibility of higher rents for rental accommodations in the future and on and on — I think this group has been so hard hit, and it will just make the sting of unemployment sharper. People will put up with intolerable conditions in order to keep their jobs. High unemployment rates, especially in social service jobs, which are a traditional source of employment for many women, will ensure that no one will quit a job except for the most flagrant abuse of workers' rights. The poor job market also gives a lot more power

to employers — the power to intimidate, abuse, harass and the power to threaten a worker with job loss if they dare to complain.

I will present three typical examples of women who have had their rights violated or worked in unhealthy conditions. These are all true case histories and they have occurred locally, and they have come to our attention. I have to slightly alter the identifying information, however, to protect confidentiality. All three women intend to stay in the community and hope to continue working in their fields and are afraid to be identified. This is a real fear in a small community, this fear of reprisals. I'm pleased to offer their stories on their behalf.

1400

Case A involves "Catherine," a single mother of one, newly graduated from a social services diploma program in 1994. She found part-time employment in her chosen field as a counselor at a local agency from September 1994 to March 1996. Her wages were supplemented by child support payments. She was very happy to be working in a field where she had hoped to make a career, and extremely happy to finally be off social assistance. All indications were that she was performing well and that her job, though part-time, was secure. She had an evaluation after one year of employment, which was customary for all staff. There were some problems that were very minor and correctable, but all indications were that the agency was very pleased with her job performance.

At the end of February 1996, the supervisor called her in for a routine supervision meeting and told her that her confidence level was not what it should be after one year of employment, according to what the supervisor expected. Catherine had no prior indication that this was a problem and it wasn't brought up in her yearly evaluation, nor was there any discussion of this being a problem, either verbally or in writing. No important policies, such as confidentiality or safety of the clients, was breached by Catherine. She was not given a time period to improve the supposed problem or constructive assistance on how to meet her employer's expectations.

Anyway, the options that were given to her were quit, be fired or take a demotion to night support. This night support position was a cleaning and meal preparation position, paying \$4 per hour less. This was also a part-time position. Three shifts that were already booked for that week were taken away from her. Also, her parenting responsibilities did not allow her to take night work, because she would have had the additional burden of paying day care for a job that paid considerably less; her child was school-aged, so she was at least not having to pay those day care costs during the day. The alternative position offered her was also not dealing with clients, which was the employment experience that Catherine wanted and was trained for.

She was devastated, shocked and angry. She quit because she didn't think she had an option, and also she didn't know she had any rights. But a co-worker suggested she go to the labour board and find out if she did. It was one month before Catherine found out that she may indeed have had her rights violated. In April, she went to the labour board office to pick up her papers.

The staff there was very helpful and explained her rights to her and helped her fill out the forms, which she had to present to her former employer. She was told to give them seven to 10 days to respond. She did meet with the executive director of her agency in that time period. The director seemed surprised at her termination of employment as well. She didn't know about it, and asked her what her expectations were from the labour board. Catherine stated that at the very least she wanted severance and compensation for the three lost shifts, but she did want her job back too.

It appeared that no process was adhered to in the termination of employment and the executive director was not aware of this decision. Catherine said low self-esteem, which was cited as a reason for her dismissal, was not an issue because her self-esteem was actually soaring due to her job, which she enjoyed very much, and because she was finally off social assistance.

This story has a partially positive outcome because of the Employment Standards Act. Catherine did not get her job back, but she was able to resolve this issue quickly because of the threat to the employer of a labour board investigation of the case. She received severance based on time worked as well as financial compensation for the three withdrawn shifts. She also received a good reference, and her separation papers stated, "unsuitable for work" instead of "quit" so her UI eligibility would not be affected. She feels strongly that if the agency had not had the threat of a labour board investigation, they would have dismissed her complaint and not taken her rights seriously. She also would have been on social assistance again, instead of UI.

In the past year, she has taken the opportunity of UI training to gain new skills, and now I'm pleased to report she's starting a new business.

Under proposed changes, it is unlikely that Catherine would have been able to resolve the situation with her employer or known that she even had any rights. She also would have had a deadline of six months to file a complaint, and it may have taken her longer than that to find out that her rights indeed had been violated. It was unnecessary for the labour board to continue to be involved, because the matter of compensation was dealt with internally.

This true case illustrates how employers can use the threat of unemployment to lower wages or demote workers. The current standards are especially important for unorganized workers in low-paid sectors or part-time positions, many of whom are women. This legislation is the prime device for ensuring that workers are not exploited in these types of jobs.

Case B involves "Marianne," also employed at one of our local agencies from September 1995 until May 1996. Because of very unhealthy workplace conditions, which included severe verbal harassment and being forced to do tasks which put her at physical risk, she was forced to quit. When she quit, she was owed vacation pay for the nine months she was employed. Her employer claimed he included them in her biweekly pay, but she was never provided with any pay stubs to substantiate her claims. Her separation papers also stated she was fired, but she was forced to quit due to these unhealthy working

conditions. Of course, this affected her UI eligibility. She felt quitting was the only option, because complaining to the labour board in this small workplace would have made her working conditions even more intolerable.

Marianne did eventually get her vacation pay and she did qualify for UI after the cause of termination was changed on her separation papers. Again, Marianne found the threat of a labour board investigation was very helpful in receiving the moneys owing to her by her employer. Marianne came to this workplace from outside the community and she did not have friends or family to give her support with the stress she was dealing with daily. She felt it was very important to her to have an outside body that was advocating for her rights and have those clearly defined minimum standards of employment conditions.

Like most employees, Marianne had to leave her place of employment before complaining. There are no protections for workers to prevent being harassed or fired if they complain. There is no provision to have a fired worker reclaim their old job. In today's insecure job market, workers will put up with harassment rather than claim their basic rights. Under Bill 49, those rights, weak to begin with, will be further eroded. With federal changes to unemployment insurance compounding this, quitting is not a viable option, especially for single mothers with dependent children.

Under Bill 49, employees will only have six months instead of two years to make a complaint. The ministry's investigation will only go back six months from the complaint, instead of the two years under current legislation. The six-month claim limit will reward the very worst employers. They can rip off their workers for many months or years and only have to pay for six months of violations. In periods of high unemployment, many workers need the extra time to find a new job before they quit the old one, and it often takes much longer than that. Most workers don't file a complaint unless they find a new job or the employer shuts down or fires them.

Many unorganized workers work in small business. Since small firms are where the main growth in jobs are occurring in our economy, it is important to ensure that they adhere to basic legislative minimum standards and they do not negotiate them downwards in an attempt to take advantage of a large unemployed pool of workers who are desperate to work. I would like to add that the threat of workfare looming in the not-too-distant future is going to really put that pressure on even more, where people, rather than work for nothing in order to have their basic needs met, will take any jobs under any conditions.

1410

Employers today often argue to government that in order to be competitive in a global economy, they no longer can afford to adhere to minimum standards that provide a decent living wage and healthy working conditions and do not force workers to put in long hours that will harm their health or disrupt their families. However, this argument does not make sense. In fact, it's bizarre when you're talking about food service workers, domestics, nannies, cleaners, people who work in social service agencies, because they're not competing in the

global workplace. This is simply a means of exploiting the most vulnerable workers in our economy in the race to the bottom for low wages.

Over half of the employees in Ontario today are not protected by a union. Many of these are women at the low end of the wage scale. Increasingly, they work part time, contract work or do home work. The Employment Standards Act is the only protection they have, and it determines the basic minimum standards and working conditions of their place of employment. With all the recent cuts in, for example, social assistance, and the imminent threat of workfare on the horizon, workers are increasingly more afraid to assert their rights and complain about bad employers and bad working conditions. There are a lot of bad bosses out there and a lot of unhealthy workplaces. If workers will put up with more, you can be sure that some employers will exploit this.

I just want to end with one final case history. Case 3 is an illustration that there are bad bosses that make workers extremely vulnerable. This case involves "Judy," a 25-year-old social worker also employed at a local agency for eight months, from 1994 to 1995. She suffered intolerable working conditions in the form of harassment and verbal abuse under a supervisor. The stress-induced illness that she suffered forced her to quit for health reasons.

After quitting, she had two weeks' wages owing to her that she could not recover, as well as vacation pay for the eight-month period she worked. Her employer also refused to give this to her. In addition, her boss refused to give her separation papers, which she needed to apply for unemployment insurance. She was fortunate to find another job almost immediately and she was also fortunate because she was one sharp woman and she knew her rights. With the safety of a new job, she complained to the labour board, and after four months she finally received her wages owing, and her separation papers after one year. So she was really lucky that she did find a job right away or it would have been a devastating situation. She would have had no income at all.

Judy says that the labour board initially recommended that she pursue her case with the Human Rights Commission or undertake civil litigation through the courts, because she did have a very strong case. The first option would have taken many years, and the second option she simply couldn't afford. She worked, clearly, for a bad employer. Judy was on medication for many months and she had to undergo counselling for a year. Six months after quitting her job, she was hospitalized for bleeding ulcers and had to undergo surgery.

Women in non-unionized workplaces are extremely vulnerable to bad employers and unhealthy workplaces. The existing protections are full of loopholes and exemptions, but they do work to keep bad employers in line and they do provide basic protections to our most vulnerable workers.

I just want to sum up with saying what I feel the basic protections workers need are:

(1) Clearly defined rights that are understood by both employers and employees.

(2) Methods of enforcement of the Employment Standards Act and penalties for violations of these basic rights.

(3) Swift investigations and decisions.

(4) Basic minimum employment standards that are non-negotiable.

Bill 49 provides none of these protections to vulnerable workers and, indeed, makes their situation worse, it makes them more vulnerable. Thank you.

The Chair: Thank you. That leaves us with two and a half minutes of questioning per caucus. This time the questioning will commence with the official opposition.

Mr Hoy: Good afternoon. Thank you for your presentation. Your presentation and the one prior focused mainly, but not exclusively, on women and other vulnerable people as well. In the beginning you were talking about costs that people are currently having to deal with as far as maintaining their own lifestyle, bills that they have to pay, and increasingly as we approach the school season, I'm hearing about the increase in tuition and other fees that universities are implementing that were either increased or were never there before until this coming September. So there's another cost that families will have to be looking at.

Your presentation of examples of people who were helped by the ministry seems to fall in line with most of what we have heard thus far. In a general sense, people are saying that the ministry staff were very informative, they told these women what their rights were, they were very helpful, and I don't recall that we've heard anything to the contrary that the ministry staff were generally quite polite. The problem seems to be now that after discussing their rights and telling them what they are and giving them some guidance is enforcement and, of course, collections. For anyone in the workforce we simply must do better in that regard.

The service sector, to me, it appears has a lot of part-time opportunities. We've been told — well, women in general are working two or three different jobs on a part-time basis but, as well, I know from experience within my community that some women prefer to only work part-time so that they can share some time at home and work. They enjoy that flexibility of working part-time and also being at home maybe three or four days a week. So it's not always a purely economic choice that they work part-time at three or four different jobs, it's one that they rather enjoy, that freedom of being home and away.

I appreciate your examples. It will help us out a great deal as we discuss this bill with the government. Thank you for being here.

Ms Fisher: Okay.

Mr Christopherson: Thank you for your presentation. I appreciate it very much. You are now the second presenter in row, third one today, probably well over 25 or 30 presenters before you in different communities who have focused on this issue of people being afraid to file a complaint while they're still working, and therefore going from two years to six months will hurt those fearful, vulnerable employees. I want to point out to you that the minister — and I'm reading right from her remarks on the day we launched these hearings — said on this issue, "Filing a claim within six months will result in speedier resolution of complaints and allow employees to receive the money owed to them more quickly." No reference whatsoever to the circumstances that vulnerable

employees will find themselves in and how much they'll lose as a result of that.

Through you, Mr Chair, having heard so many people talk about this issue, I want to challenge the government members who are here to unhook the leash that the minister has around your neck and either refute what people are saying on this particular issue or admit that this is going to hurt people and that you will recommend it be changed. It's time to put up or shut up. We heard this issue time and time again, and you sit there silent and say nothing. Let the chambers of commerce come in and say that's all about expeditious procedures, and let the parliamentary assistant talk about privatizing collection agencies, and you don't talk about this issue at all. Talk about it. You're next. There's somebody right there. Take them on. Either take them on or admit you're wrong; one of the two.

1420

The Chair: Mr Baird, and then Mr Wettlaufer.

Mr Baird: Thank you very much for your presentation. In response to my colleague the member for Hamilton Centre, obviously if we think that we can immediately change the entire employer-worker relationship in the province of Ontario with one piece of legislation, I think that's a little bit naïve. I think if you look at the Employment Standards Act —

Interjections.

Mr Baird: Well, if he had such great ideas I don't know why he didn't do them. The Legislature only sat for five weeks the last year, and that's a reality. If you had such great ideas, where were you?

Mr Christopherson: You said you're not hurting anyone.

Mr Baird: My point is that this bill contains strong, strong — the Employment Standards Act, not this bill, it's not affected by this bill — protection for anti-reprisals. It's a very serious offence. When we brought in Bill 7 the only condition by which a union could be recognized without a vote is if an employer seeks to reprise someone organizing. That's how serious we take it. If you've got any specific examples to keep employees while they're there, while they're there, or what we can do to protect them, I think we'd most be thrilled to run back, not walk, to the minister with them. Specific ideas. We'd welcome them.

If there's a better way — we'll accept complaints anonymously and investigate them. If you've got other ideas, I'd be happy to take them back; specific ideas. It's great to talk that way, but I haven't heard any suggestions on how to stop this. If there's employees working there, they're leaving because they feel they don't have the protection. We've got a strong anti-reprisal position in the act — not this bill but in the act; the one that was there under the previous two governments — and we're happy to take it back.

Ms Fisher: Well, if I just may comment on that. I don't think weakening the protections for these vulnerable workers is going to do anything to help them.

Mr Baird: But what specifically — you've had a lot of experience in this area. I'm the first to admit that I don't. If you can tell us what specific things we can do, I think we'd be more than thrilled to receive your

comments. If there's things that the previous government couldn't think up, the Liberal government couldn't think up, and we have — I think the fine is \$50,000 for reprisals —

Mr Ted Chudleigh (Halton North): And six months in jail.

Mr Baird: — and a potential six months in jail, or both. If you can tell us what else we can do to add to that, I'd be pleased to take them directly to the minister, as I know my colleagues would. I think that's an issue we treat very, very seriously.

You say this hasn't come up. It's come up. I've certainly talked about it on more than one occasion.

Mr Christopherson: Why are you doing something that's going to hurt them more? You call it —

Mr Baird: None whatsoever.

Mr Christopherson: It's something that's going to hurt them. Don't play games with the presenters. Face them head on.

Mr Baird: None whatsoever.

The Chair: Mr Christopherson. Come on, Mr Christopherson. You invited them to respond. You're in their time.

Mr Baird: What's your alternative?

The Chair: You can respond during —

Mr Baird: What's your alternative?

Mr Christopherson: My alternative? Scrap this bill.

Mr Baird: I think it's an admission of failure on your part that you have no specific —

Mr Christopherson: I'll challenge your labour legislation against ours any day you want.

Mr Baird: You bring your specific proposals and we'll measure them up.

The Chair: Gentlemen —

Mr Baird: Right here. Bring them forward. You got 25 cents on the dollar, you fired the employment standards officers, you cut back health and safety standards, you brought in the social contract —

Mr Christopherson: How about you and I have a debate on this, John? Anywhere you want a public debate.

The Chair: You're both out of order; especially you.

Mr Baird: I'm not going to take any advice from you.

The Chair: Order. Mr Wettlaufer, you have two minutes.

Mr Wayne Wettlaufer (Kitchener): I'm really disappointed that debating is going on in this forum, because both members know this is not the time or place for debate. We're here to hear your input and I thank you very much for your input.

One of the things that I've observed, however, in the presentation that you made is that there is some unsubstantiated representation, and I would refer specifically to page 2. You're talking about case 1, Catherine, where you say: "Under proposed changes it is unlikely that Catherine would have been able to resolve this situation with her employer or known that she even had any rights. She also would have had a deadline of six months to file a complaint. It may have taken her longer to find out that she had rights."

In point of fact, it didn't take her longer under the existing legislation, and it wouldn't take her any longer

under the proposed legislation. There is absolutely nothing in here which would affect her ability to find out what her rights are. Secondly, it has no bearing on her ability to resolve the situation with her employer. There is no place in this legislation where it would do that.

The second point that I would refer to specifically under page 3 where you say: "Under Bill 49, those rights, weak to begin with, will be further eroded. With federal changes to unemployment insurance, quitting is not a viable option either." I'm sorry, I have to say again this legislation doesn't affect that.

The next paragraph you say, "Most workers don't file a complaint unless they find a new job or the employer shuts down or fires them." Ninety-five per cent of cases are resolved within six months. Most people get a new job. You say: "Employers often argue to government that in order to be competitive in the global economy, they can no longer afford to adhere to minimum standards that provide a decent living wage" etc. I would like to know specifically who those employers are. We often hear allegations of who the employers are, but no specific employer is ever mentioned.

Ms Fisher: There were a lot of comments there. I don't know which one to respond to first. The six-month period, this is after the complaint is lodged, you said most employees find a job within six months?

Mr Wettlaufer: Or the complaints are resolved within six months.

The Chair: Sorry, Mr Wettlaufer.

Mr Wettlaufer: Thank you.

The Chair: Sorry to cut you off, but we're over our 30 minutes there. We appreciate your taking the time to make a presentation before us.

Ms Fisher: Thank you very much.

SAULT STE MARIE AND DISTRICT LABOUR COUNCIL

The Chair: The next presentation will be from the Sault Ste Marie and District Labour Council. Good afternoon and welcome to the committee.

Mr Eric Greaves: Good afternoon.

The Chair: You've already heard my rejoinder to every group that comes in so I won't tell you about the time allocation.

Mr Greaves: Yes, it's been an interesting day.

My name is Eric Greaves. I am a Steelworker employed at Algoma Steel here in Sault Ste Marie. I own part of a little steel mill up in the bush here, as you may have heard. I'm a worker-owner. I'm also a Steelworker delegate to the local Sault Ste Marie and District Labour Council. I am a parent and a taxpayer here locally. This is not a situation that I'm comfortable with, but rather than make myself too comfortable I didn't prepare a brief and I'm ad libbing. I just wanted to try to give you some kind of a view of what it's like to be from the Sault and be a Steelworker and belong to a labour council and be faced with this kind of legislation.

In the north, we have cult figures that we talk about over the fireside when we're roasting marshmallows or whatever we like to do of an evening. One of them is Conrad Black. We remember him. When I was eight years old I used to go to the local A&P store with my

grandmother and buy cookies. It's kind of a familiar and friendly store. Conrad, some years ago, developed ownership of the place and raided the pension money of the employees. We all heard about it because it's a small town and eventually due process asked him to give it back, I understand.

Anyway, Conrad recently purchased or acquired some serious control over Southam press, so I expected that the employment standards hearings that were coming up would not be reported in an extreme way, because I thought that perhaps he would have some editorial influence and that in fact the upshot would be that there wouldn't be much in the way that would stir the waters.

Just last week, our local paper, the Sault Star, printed an article under the heading "Employment Standards Act." It's by John Hamilton of Southam press, and it says: "'Bill 49, malicious legislation,' lawyer says. Critics charge that rights of the worker will be limited while cheats and con artists will benefit." This knocked me right off my dining room chair where I was trying to digest the day's news.

1430

Employment standards, as we've been hearing today, are not necessarily widely understood or widely known in this community. I personally have had two brushes with that branch of government and I'd like to share them briefly.

My 19-year-old son, tree-planting not far from here, worked very hard, developed calluses and cuts and strains, but generally thought it was a good experience. However, he would have appreciated being paid for his work, and this didn't happen. Because I belong to a union and I had heard that our contract, our collective agreement, is based on the Employment Standards Act and also because one of my neighbours, whom I had given a lift to work, said, "Oh yeah, I work right next to the employment standards office," that's how I knew where it was. I said, "Why don't you go and ask somebody there if there isn't a law to protect you from working like hell and not getting paid for it." He went and after a period of time he did get paid. That's how it's supposed to work and that was pretty neat.

We had a labour interruption. It's sometimes called a walkout, it's sometimes called a lockout and it's sometimes called a strike, but whatever it was, it happened just a few years ago here in the Sault. After discharging my picket duties and working on various groups to try to smooth the period of unemployment for our brothers and sisters in Local 2251, I sought part-time employment locally because I really wasn't having my time filled. I got work with a construction outfit that was building a school here in Sault Ste Marie. The owner was a numbered company. It's one of these outfits we have in Ontario where you can basically make a bid, get a job, move in and do your work. If they don't like what you did, you can fold up and run away.

Anyway, this is what happened: I worked six days a week, 12 hours a day, here in Sault Ste Marie. I was paid, then I wasn't paid right, then I was paid again and then I wasn't paid at all. Because I'd had this experience with my son, I proceeded to find an employment standards officer and asked if I was doing something wrong

here. Shouldn't payment follow work? I was told I was in the right so I made loud noises. I got the cellular phone address of the owner of the company, who was travelling around Toronto; he didn't have an office. Anyway, I got through to them and eventually they decided they would pay me for a couple of weeks. I had to stop work because of an accident on the work site. That's all well and good. I know this is in the vernacular, but this is how I remember it: About three or four weeks later, the work was done, the site folded and local people lost up to \$1,500 apiece, for which they worked very hard, to this numbered company and they didn't get it back.

So I feel we need employment standards; I don't think we would ever want to reduce. When the United Nations tells us that Canada is the place to live in the world, that it has the best quality of life out there, and when they make the point of announcing that and the world press picks it up, what's happened is we've embarrassed America. The United States of America is somewhat embarrassed that they don't make it and we do. It's obvious that it's a lot harder — and this is just a little bit of between-the-lines, backroom labour council thinking from me — for the States to bring their standards up to a point where the United Nations will say, "Nice place to be." It's a lot easier for the current wave of small-c conservatives to simply bring down the standards in Canada. I understand why this might happen; I just don't approve of it.

I understand that at the first hearing, which the minister attended, the idea of flexible standards, one of the proposals for this act, was withdrawn. I was very pleased to hear that because I was lying awake at night last week, having read a brief on the subject, trying to figure out how in the heck you can have a standard which then becomes flexible and negotiable. As part of a local union like 2251 with thousands of members, I agree we can to some extent negotiate and we have some protection, but obviously 75% or so of the workforce in Ontario doesn't have that organization behind them. Anyway, I'm glad the contradiction was clear and I sure hope it's not coming back in phase 2, but we'll see.

There are very positive things you can say about this minor housekeeping that Mrs Witmer has encouraged. A couple of formalities: I believe the idea of clearing up the fact that people are entitled to vacation pay, various circumstances notwithstanding, is pretty well what the referees have been saying, so it probably saves a lot of time and money to formalize that. I can respect that as good housekeeping. The same with the idea that service and length of employment with a company would include parental and pregnancy leaves. That kind of thing, again, is respectable, it definitely is efficient and it definitely makes government look better and improves the quality of life of people who are trying to earn a living.

Termination pay in seven years: Another goodie; sorry, it would be good if it was seven years. Around Algoma Steel we talk in terms of how long we're going to last. That's just to keep ourselves sharp, not because we're worried. Termination pay should be delivered to an employee within seven days. That's fairly prompt and that certainly would address some of the issues that have been raised at this table today.

Essentially labour councils, like most unions in my experience, like most Canadian citizens in my experience, prefer cooperation. They prefer partnership. We're all willing to produce more. We don't think it's too much to ask for an improved quality of life as time goes on. We don't think we have to globalize Sault Ste Marie or workplaces in general based on coming down to anyone else's standards. We have something worth protecting with our workplace standards and generally that's what we'd like to keep on doing.

Enforcement under a collective agreement: I think I've heard today that there is some thought that it's okay for a union to take on the costs of every single employment standard grievance or problem. I suppose if you had a really wealthy union that had nothing else to do and volunteered to do that, it would be a great thing, but at the moment, as we know, it has been a government responsibility to protect these standards, enforce these standards. What this legislation seems to be trying to do is enforce a massive user fee on union members. The union members are the ones who develop any coffers that the union has, so if we're going to redirect our union officers to spend their time doing what a government department used to do instead of, in the case of Algoma Steel, for example, trying to make the business both viable and a growth proposition for the economy, locally it doesn't make sense to me, it doesn't ring true, it doesn't resonate, or whatever the word might be.

1440

Enforcement for non-unionized employees: We're hearing that most new jobs in the economy are in smaller workplaces. That being the case, we're cutting these people off without a hope of minimum standards if we mess around with flexible standards, for example, in my opinion.

Use of private collectors seems all wrong to me. It seems wrong because the responsibility was the government's, and to give it to a private corporation that will then proceed to wheel and deal to expeditiously pick up a fee which the employee is going to end up paying does seem a bit much.

The positive features of restructuring and worker ownership and of life in the north — that is, being good neighbours, having a sense that there is hope — are being eroded, put at some risk by the tone of this legislation. It all comes down to philosophy, and that's why I'm talking at this level rather than trying to get into the nitty-gritty of the legalism.

I think I'd better be quiet and let you hit at me.

Mr Christopherson: Thank you very much for your presentation. We appreciate it. You already had some, but I'll give you some more bad news. You were hoping that the flexible standards weren't coming back. I want to read to you from the minister's prepared text when we kicked off the hearings. She said, "We remain committed to providing more flexibility to the workplace parties. However...we believe this provision should be considered in the context of these future discussions...." All they've really done is move it out of Bill 49 and into a larger review, which I dare say is not going to be any more good news for workers than Bill 49 was.

But it is important to state again that the only reason that happened was because we pushed this government into having public hearings. The only reason we're here is because we pushed the government. Their game plan was to have this bill, with flexible standards included, law by last June with no public hearings. That was the game plan. So when we accept the fact that it's not in this bill, we should see it as good news that we were able to force them to blink, but we ought not sleep thinking that it's dead. It's still alive and it will rear its ugly head elsewhere.

I want to move, though, to the issue of the grievance procedure in collective agreements being used to enforce the Employment Standards Act. As a representative of the Sault district labour council, I know you'll be somewhat familiar with not just your own workplace but others. We've heard different presentations that a grievance, when carried all the way, can run anywhere between \$40,000 to \$70,000; that's not an unusual range for a grievance. That is a price the union pays. The union is not an entity unto itself. It's not a natural element of the earth. It is working people coming together and working and using their collective voices and their collective efforts to act as one. But it means that each of those individual union members is going to have to use some of their union dues to pay for something that's already provided by the government and rightfully should be.

Do you think it's fair to suggest that it's two things; first of all, a downloading of responsibility or an off-loading of responsibility from the provincial government to the labour movement so that they can lower the cost to the ministry? That lets them lay off employment standards officers because they won't be doing the work; you will be. You'll be doing their work. That lets them lay off the officers, puts more pressure on the labour movement, and we already know that this is an anti-union government. Everything they've done around legislation affecting unions has hurt them or attacked them. And secondly, that in some ways this really is a user fee on the ordinary union member who is now having to pay for something that they didn't have to pay for before as a result of a cut this government has made. Do you think that's a fair statement or am I being unfair?

Mr Greaves: You say it better than I did, but that's exactly what I was getting at. I think it is a downloading of responsibility. I think it's an attack by this particular government on unions at large and I think it's kind of funny, except that it's happening. I mean, it's absurd, from my point of view, that government would turn around to what is essentially a service organization and say, "You will now perform different services and you will now foot the bill for it," and this is minor house-keeping? I find it outrageous.

Mr Christopherson: I do too. The fact that the government continues to call this an improvement, do you think it's fair to say the improvement is all on the side of the employers and that indeed workers are losing something big time in this bill?

Mr Greaves: Yes, the employers are going to definitely have a bit of a field day. I mean, they can have a field day with this if they want to lower their standards. They are free to do that. I would hope that a lot of them will

choose not to. What bothers me most is the tax cut that's coming up. People who really don't need the money are going to be given a break and people obviously who do need help have already been cut, and through situations like this, it looks like there's more and worse and stronger measures coming down the pike and I don't see how it's good for Ontario, Canada, any town in sight or any company in sight. I think it's a mistake.

Mr O'Toole: Thank you very much, Eric. I was very pleased the way you opened your presentation with introducing yourself as the owner of a steel mill. I think that truly is the spirit today, that we individually are responsible for our lives, if we don't have a disability. I think Algoma workers here have done a fabulous job to keep something that otherwise would have died and you should feel proud about that.

With your experiences with the school situation, not one member on this side or that side would disagree with the statement that you made, that anyone who works legitimately is entitled to what they're entitled to and we support that. I want you to be clear on that. We're not supporters of bad bosses. Well, we're not. If you heard the chamber, they aren't either. So don't let all of the rhetoric get you carried away. We really are just people as well and they do not have the corner on sensitivity.

We believe that we are in serious trouble in this province and we're really about fixing it; not talking about it — fixing it. It hasn't worked and the employment standards doesn't work and I can sit here and give you the numbers. It doesn't work. It doesn't collect the money. We're trying to work together to fix it. This government agreed to have public meetings and in fact there will be broader discussion papers and we want your participation.

Mr Christopherson: You agreed after we forced you. You do that in every city. You keep saying that you wanted to —

The Chair: Mr Christopherson.

Mr Christopherson: Chair, you know, he provokes me. He keeps talking about that the government wanted —

The Chair: Mr Christopherson.

Mr Christopherson: — we dragged you kicking and screaming.

The Chair: Order.

Mr O'Toole: — address my comments to you because this really is your time, Eric, and to address Mr Christopherson, ultimately we did listen. That proves the very thing I'm saying. We did listen, we are here and these have been very beneficial public hearings.

By the way, we are entitled at any time to get briefs. I meet with the labour council in my area and the union leadership there and I don't have a closed mind to change. What I hear Mr Christopherson saying, it really shocks me. I'm quite stunned, and I'm not sure, on rereading Hansard, he won't be surprised himself. The context of what he's said is, "Unions are losing here." Do I understand him to say that he doesn't think the union leadership is capable of representing people like you? Quite the contrary. I think that the union leadership is doing an admirable job of creating militancy and whatever else they're about.

1450

But I really want to make one final point —

Mr Christopherson: Have you got room for the other foot in there?

Mr O'Toole: No, I really do think — I'm surprised. You read Hansard. You said in your introductory remarks that your collective agreement covers most of the issues in the Employment Standards Act today. That's what you said.

Mr Greaves: I think it's the legal floor, the basis of our contract.

Mr O'Toole: And when it comes to clause 3, all it says is that you will be able to look at a range of benefits for your individual employees in your individual workplace that will be no less than the employment standards themselves collectively. That might mean, for example, someone like you, with a family and that, and you talked about the various things you're involved in, might be able to trade off overtime for time off. In certain workplaces, there are changes taking place. There are more home workers, there are people working more than one job because there isn't enough employment. So I think the world of work is changing. We need to change the Employment Standards Act for those very reasons, wouldn't you agree, to keep up to date? It's 1968; it's a few years old.

Mr Greaves: I do agree that it's a changing world and that our standards will change. My only problem is if they change in such a way that people have less quality of life than they had before. I'm very, very fortunate in my employment. Many people in Canada are not and many people in Ontario don't have a shot at a job right now that you or I would want.

Mr O'Toole: There's no intention in this legislation, despite what we hear from the opposition, to bring down the standards and I want you to go away today convinced that that's the real intention.

Mr Hoy: Good afternoon. Your presentation was just fine. You delivered it well and you obviously gave it some thought before you came in today and I suspect while you were sitting here you developed some more thoughts on what you wanted to say this afternoon. In my notes on what you talked about, the largest print that I wrote down was that you want to see the quality of life in Ontario maintained. Of course, it's taken us decades, literally decades, by various governments, to get to where we are now, and of course, you cited that the rest of the world thinks we're a pretty good place to be, and I agree with you there. So it appears to me through all the hearings to date that people are willing to help contribute to maintain those safety nets in the best way they know how and by trying to provide us collectively here as a committee the best information they have.

Your presentation was balanced enough and I want to talk about what you did say in regard to the unions. That's why I thought your presentation was exactly that — balanced. You did say that you thought that large unions could probably handle themselves reasonably well in negotiating certain aspects of the collective agreement. But you did say that smaller unions — and you think that workplaces are getting smaller by the nature of what's going on in the workforce now, and I don't know specifi-

cally if you mentioned the unorganized but I think you have a concern down at the smaller unions as opposed to the very huge. I don't think that you have any doubt that the unions represent their workers and can continue to represent their workers. Anyway, if you'd like to comment on any of my statement here, it's fine, but I appreciate what you said today.

Mr Greaves: It's only fair: If I rambled, you can too. If I was giving you the impression that smaller unions were my focus, I must have slipped on my note card there. Essentially, my impression is that roughly three quarters of the working population of Ontario is not part of a union, and as such, my impression is that they have even less protection under the proposed legislation than I do, and I'm being threatened. The basis for my contract of employment is disappearing as we speak. I have no doubt that the juggernaut of this legislation is going to go through. I'm just hoping that phase 2 isn't going to be what the rumblings are. I'm just trying to push the balance towards what I think is reasonable.

The Chair: Thank you, Mr Greaves, for appearing before us here today.

OTF ALL-AFFILIATES COALITION OF ALGOMA DISTRICT

The Chair: That leads us now to the OTF All-Affiliates Coalition of Algoma District, our next presenter. Good afternoon. Welcome to the committee. Again, we have 30 minutes for you to divide as you see fit.

Mr Art Caligari: Good afternoon. I'd like to begin by introducing myself. I'm Art Caligari. I represent the Ontario English Catholic Teachers' Association here in Sault Ste Marie. To my right is Elizabeth Szczotka. She's also part of my executive. Reno Palombi is not present at the moment but he was here.

I'd like to begin with a short introduction, if I may. The OTF All-Affiliates Coalition of Algoma District welcomes the opportunity to address the standing committee on resources development. As teachers, education workers and parents, our members have very grave concerns with various provisions of Bill 49.

The OTF All-Affiliates Coalition of Algoma District represents the vocational and professional interests of approximately 1,700 elementary and secondary school teachers, educational workers and support personnel employed by the separate and public boards of education, serving the residents of Michipicoten, central Algoma and Sault Ste Marie.

We are apprehensive about the quality of life that awaits our students when they are ready to enter the workplace. The proposed amendments will aggravate the dismantling of the social fabric of Ontario and the erosion of economic and social justice.

The OTF All-Affiliates Coalition of Algoma District urges the committee to review and reconsider the amendments proposed to the Employment Standards Act in order to ensure that the basic standards currently available under the act remain in place and proper enforcement is provided.

The Honourable Elizabeth Witmer, Minister of Labour, in a statement to the Legislature claimed that over the last 20 years the Employment Standards Act "has become

increasingly complex, more difficult to understand and administer, and more expensive to enforce." On May 13 the minister introduced changes she said will facilitate its administration and enforcement "by reducing ambiguity, simplifying definitions and streamlining procedures."

Through one of her changes, unionized workers will be able to negotiate changes to established standards. Hours of work, statutory holidays, overtime pay, vacation pay and severance pay can all be changed as long as "the negotiated standards as a package provide greater rights or benefits" than those in the act.

At the moment, the act states that time and a half must be paid for all hours worked in excess of 44 hours per week. Most union contracts require it to be paid after 40 hours. The act defines eight days, such as Victoria Day, as public holidays. Again, most union contracts go beyond this minimum number and allow a day off with pay on other days, such as Heritage Day or the civic holiday in August.

Should the amendments pass, employers will have the right to pressure their workers, through collective bargaining, into giving up some of these rights. For example, an employer could get away with paying overtime after 48 hours, previously a violation of the act, as long as the other benefits outweigh the loss and the total package is still greater than the minimum standards in the act, and of course as long as the union agrees to it. But who will judge whether the negotiated package is better than the legal minimum?

The minister has done nothing to streamline the Employment Standards Act. She has, rather, turned it against the very people it was designed to protect. This amendment adds one more weapon to the employers' already well-stocked arsenal while further restricting the unions' right to fair and open collective bargaining.

1500

As standards for unionized workers decline, those for non-union workers will definitely plummet.

Bill 49 represents more than housekeeping. It is our contention that this legislation does not improve the present Employment Standards Act but deregulates and therefore weakens the protection of employees, leaving loopholes for employers to exploit.

As Judy Fudge, in her work *The Real Story: An Analysis of the Impact of Bill 49, The Employment Standards Improvement Act*, states:

"When the government talks about abolishing red tape through Bill 49, what it means is that it is making it easier for employers to avoid their legal obligations. When the government says it is facilitating the enforcement and administration of the legislation, what it is really doing is shifting responsibility for enforcing basic labour standards on to individual employees and to unaccountable private collection agencies. When it claims that it is saving money by changing enforcement and collection procedures, what it is doing is simply shifting these costs on to vulnerable workers."

She continues that what the proposed changes do "is force unionized employees to rely on the expensive grievance arbitration procedure. In effect, the Ontario government is proposing to privatize employment standards enforcement for unionized employees."

Both organized and unorganized workers will find it more difficult to enforce their rights while employers will find it easier to take advantage of workers. The standards which workers have counted on in Ontario for decades will be diminished.

It is the opinion of the OTF All-Affiliates Coalition that the changes proposed only further tip the balance in the workplace to the side of the employers at the expense of the province's 5.8 million workers.

Ms Elizabeth Szczotka: I would like to discuss some of the specifics in the changes. The first one is flexible standards. The amendment permits the workplace parties to circumvent important minimum standards. Under the act it is illegal for the parties to a collective agreement to negotiate provisions below the prescribed minimum standards. The bill allows a collective agreement to override the legal minimum standards prescribed for severance pay, overtime, public holidays, hours of work and vacation pay if the agreement confers greater rights when those matters are assessed together.

Employers will be free to attempt to bargain the retention of what were previously minimum standards with regard to overtime pay, public holidays, vacation pay and severance pay, in exchange for increased hours of work.

Bargaining will become more difficult. What were accepted minimum standards in the past will become obstacles to the conclusion of collective agreements.

Another area is the enforcement under a collective agreement. Under the act, unionized employees have access to the investigative and enforcement power of the Ministry of Labour. This inexpensive and relatively expeditious method of administering complaints against employers had proved extremely useful, particularly in situations of workplace closures and with issues such as pregnancy leave, severance and termination pay.

This bill proposes to remove from unionized workers recourse to this avenue of complaint, instead requiring them to use the grievance and arbitration procedures of their collective agreement to enforce rights under the act. Unions and their members will be forced to spend more time and financial resources to pursue these complaints.

Indeed, should the amendments be passed, collective agreements will have the act virtually deemed to be included in them. Unions will be faced with fair-representation complaints by members dissatisfied with the way in which they have been dealt with in respect of employment standards complaints.

Another area is the enforcement for non-unionized employees. These amendments propose a limit of \$10,000 on the amount recoverable by a non-unionized worker making a complaint. They also force a worker to choose between making a complaint or taking civil action. Currently there is no limit on what is recoverable.

These changes will force workers with claims of more than \$10,000 to initiate civil action, a costly measure in terms of legal expenses. This will result in many workers having legitimate claims forgoing them owing to the associated costs. Workers who decide to file a complaint will be unable to claim additional moneys through the courts.

Workers who are unaware of the proposed two-week time line under the act to decide whether to file a com-

plaint or take legal action may find themselves out of luck. To quote an article from the Toronto Star written by Jonathan Eaton, "Bill 49 eliminates options for discharged employees while handing a huge strategic advantage to their former employers."

Under maximum claims: This amendment sets a statutory maximum of \$10,000 that a worker may recover through the complaint process. This maximum appears to apply to the amount owing of back wages and other moneys, such as vacation, severance and termination pay. A few exceptions are provided, such as orders awarding wages in respect of violations of the pregnancy and parental provisions and unlawful reprisals under the act.

Since workers are often owed more than \$10,000, this provision may encourage employers to violate standards, knowing that the potential for affected workers to be able to afford the legal costs and/or the time involved to follow through the court action is slim.

Another area of concern for us is the use of private collectors: These amendments propose to privatize the collection function of the Ministry of Labour's employment practices branch. Private for-profit operators will be given the opportunity to collect amounts owing under the act. These provisions would enable collectors to charge fees from persons who owe money. Even if the amount owed is not all collected, apportioning of the amount collected between the worker, government and the collector would still occur.

Obviously, this method of collection will result in workers receiving smaller settlements. They will undoubtedly face pressure from collectors to accept less and will feel they have little alternative, or risk receiving nothing at all. Unfortunately, and in addition, work formerly carried out by public employees will be farmed out to the private sector, resulting in the loss of many unionized jobs.

Another area is limitation periods: Amendments are proposed which change a number of time lines in the act. Employees will be entitled to back pay for a period of only six months from the date the complaint was filed, rather than the current two-year period. This time restriction will penalize workers who often must sever their employment before filing a complaint.

This is a serious restriction, particularly for workers who have been denied their rights for a longer period of time and cannot afford a civil suit. Workers who fail to file within this time limit will be forced to take their employer to court.

In contrast, the Ministry of Labour still has two years to conduct their investigation into a complaint and a further two years to enforce payment of moneys owing. This places an unfair burden on the worker.

Mr Caligari: In summary, the OTF All-Affiliates Coalition of Algoma District is opposed to the proposed changes for the following reasons: Workers will be forced to choose between their jobs and their rights; penalties on employers who violate the Employment Standards Act are reduced; the provision of minimum workers' rights for both non-union and union workers is removed; the amount a worker can claim against an employer is reduced; the period in which workers can register complaints is shortened; poor and low-income workers are

compelled to seek justice in the court system without the benefit of legal aid; private collection agencies are given the power to negotiate a settlement; and the amendments are a transparent attempt to weaken organized labour, as we see it.

The new law "will dilute working standards across the board in the province of Ontario," said Pradeep Kumar, a professor of industrial relations at Queen's University in Kingston. "I think the government is trying to weaken the labour movement in any way it can in the name of getting a level playing field with the US."

1510

Our recommendations: The OTF All-Affiliates Coalition of Algoma urges the committee to review and reconsider the amendments proposed to the Employment Standards Act. We recommend that the government:

(1) Maintain the minimum employment standards for hours of work, public holidays, overtime pay and severance pay currently in the Employment Standards Act, thereby ensuring the protection of the workers in this province.

(2) Clarify employee rights regarding continuation of service credits and entitlements to vacation time and vacation pay under the pregnancy and parental leave provisions.

(3) Maintain the present complaint process to the Ministry of Labour without capping the amounts workers can claim, and retain the claim and investigation time at two years.

(4) Develop procedures to enable the Ministry of Labour to more strictly enforce the Employment Standards Act with restrictions against repeat employer offenders.

(5) Let's hope it will maintain the use of public service employees to collect money owed to workers. Their commitment is to public service and to the good of the public, not for private gain.

Our conclusions: The gutting of basic employment standards for the vast majority of Ontario workers is simply the most recent victim of the government's neo-conservative agenda. The tenets of the agenda are all too familiar to those who are committed to defending the interests and rights of the vulnerable citizens of Ontario: the abandonment of social programs, reduced taxes, enrichment of the affluent.

It is not the recession that is at the core of the revenue problem. It is not the broader public sector that is at the core of the revenue problem. It is not the welfare parent nor the marginalized who are at the core of the revenue problem. Rather, it is the implementation of an economic agenda that is definitely shifting the wealth to the corporate world where it's taxed very little, if at all, and where it does not contribute its fair share to the wellbeing and social fabric of this province in which we live. Thank you.

The Chair: Thank you very much. That leaves us about four minutes per caucus, and we'll start with the government.

Mr Baird: Thank you very much for your presentation. I appreciate your time. I noted that in your conclusion you mentioned it leaves the corporate world in control. The biggest property owner on Bay Street is very

well known. It's the teachers' pension fund, which I think is important to put on the record. I noticed they were looking at trying to change the editorial policy of the Toronto Sun the other day.

Mr Caligari: We're learning to play this game as well as you are playing it.

Mr Baird: It's not what I'm playing. I don't treat my responsibilities as a game, I can assure you.

I was just reading, though, the concerns on page 8, and I feel it's important to clarify the record on a number of proposed changes you've cited your opposition to. The first one:

"Workers will be forced to choose between their jobs and their rights." No.

"Penalties on employers who violate the Employment Standards Act are reduced." The act is right here. There is not one reduction in penalties.

"The provision of minimum workers' rights for both non-union and union workers is removed." Again, no.

"The amount a worker can claim against an employer is reduced." No.

"The period in which workers can register complaints is shortened." That's definitely the case, because we feel we can do a better job for workers in retrieving their money if they come forward immediately so we can deal with the situation early on, not when memories have gone, when bankruptcy trustees have closed shop and when records are harder to attain.

"Poor and low-income workers are compelled to seek justice in the court system without the benefit of legal aid." There's certainly no compelling in the legislation.

"Private collection agencies are given the power to negotiate a settlement." That's certainly something that's done now. It's done every day. It's been done by the past government, and I don't think anyone has ever accused Bob Mackenzie or Shirley Coppen of being anti-worker or miserable. Maybe CUPE has during the social contract, but I don't think anyone would say that today.

"The amendments are a transparent attempt to weaken organized labour." I can assure you it strengthens organized labour. I think it's a recognition of the success of organized labour. When you look at the role that we're asking trade unions to undertake in terms of enforcing the Employment Standards Act, as most of them do already — we heard from a fellow from a CUPE local this morning who said his collection rate is 100%. He's a public sector CUPE local obviously, and he can get 100%. We heard from an Algoma Steelworker this morning who said he thinks his big union can do a great job doing it.

The concern is, let's differ on the issues, but let's make sure we don't veer off from what's in the legislation as a whole. That's a concern many of us have, that we find the debate going off to things that aren't all in the bill; that's a concern that many of us on the committee have.

Ms Szczotka: My response in particular to the flexible standards, if you are talking about people who are equal in strength, the employer and employee, where you can work on flexible standards to get to a mutual agreement certainly it takes some work, but you know and I know that very often we don't have equality between an employer and an employee.

With regard to the first point we had written down, that workers will be forced to choose between their jobs and their rights, we know that some employers will ask employees to have flexibility, perhaps work extra hours for maybe a holiday pay and they really have no recourse to say, "No, it really is not to my best mental health to be working all this extra overtime for some holiday pay." That is not something that I find equal. That is something in the changes to Bill 49 and that is a concern to us.

Mr Baird: Does your union and its pension fund have strict rules with respect to the fact that they won't invest in any company that is negligent in paying their employment standards orders? If not, would you bring those in? I mean that very sincerely. I think that would be an excellent way. As one of the biggest shareholders on the Toronto Stock Exchange, I think you could do more in terms of providing leadership to everyone. Obviously, it's the owners of capital who've got to take responsibility in terms of enforcement, and a rule that the pension fund wouldn't be allowed to invest in companies who are negligent on their orders I think would be a real impetus from the ownership perspective.

Mr Hoy: Good afternoon. Thank you for your brief this afternoon. You express a concern about the use of private collectors, that workers will be under pressure to settle for less. Do you want to describe for me why you feel they will be pressured to take less?

Ms Szczotka: The private collectors are, I would presume, as private agencies, to take and make a profit; that's why they're in business. Sitting down with someone who may not be fully aware of everything in the Employment Standards Act — it is not required by legislation, for example, to be posted at the workplace, as the health and safety act is — they may be pressured: "Why don't you accept this amount of money? It's very close to what you're asking for, but I don't think we can get it. We have this time line. I think this is our last" — you know how it works with negotiations. You sit down with someone and you can certainly pressure them into agreeing with something: "Right now, you can have this. This is it right now. A further six months down the line, maybe we can't guarantee this. Take what you have right now and be satisfied with it."

Mr Hoy: So the employer might have deeper pockets and can simply wait it out as the employee's bills mount or whatever.

Ms Szczotka: Yes.

Mr Hoy: In the agricultural community, which I am somewhat familiar with, from time to time the Ministry of Agriculture, through another commission, will advertise the fact that there's been fraud taking place. I don't know that they do it each and every time. Some of the cases are not large, but nevertheless there might be fraud involved. What do you think about publicizing the names of repeat offenders of the Employment Standards Act publicly?

Mr Caligari: I have no problem with that personally, if you're asking me personally. I think everybody should know who they're dealing with.

1520

Mr Martin: I'm having a really hard time believing what I'm hearing here today. All day it's been the tag

team, Mr O'Toole and Mr Baird, putting a sheen on this legislation that just belies any of the actual fact in it. I guess the phrase that keeps rolling over and over again in my mind is: Beware of wolves in sheep's clothing.

I thought it was just this piece of legislation, but I was just over at the Water Tower Inn for a few hours, where another piece of legislation is working its way through the system. Over there, they're looking at the tenant protection act. At least while I was there, no group of tenants nor anybody representing tenants nor any tenant had anything supportive to say, nor do they see this as protection for them as tenants in any way.

Here we have An Act to "improve" the Employment Standards Act of the province. In Thunder Bay yesterday and here today, I still haven't heard a group of employees or anybody representing employees come before us to say that this in any way — except for perhaps two provisions, which we give you credit for — improves the Employment Standards Act.

It seems to me that this is another example of the smoke-and-mirror approach to life that this government has taken to introduce more and more initiatives that take more and more away from those who work in this province and the ordinary citizen who is simply trying to put bread on the table, pay the rent and keep the economy going.

I suggested yesterday that this committee send a message to the government to simply withdraw this piece of legislation, because it obviously isn't doing what it says it's intended to do — we can't find any example of where it is — and that they should spend the energy and effort and resource they're using to work this piece of legislation through the process on the real agenda they should be looking at, which is creating jobs, the 750,000 jobs they said during the election they would create. That would cure a whole lot of the problems we're experiencing, because 750,000 more people working would be paying taxes, would be able to afford better housing. A lot of the issues these folks here seem to be wanting to resolve would actually probably resolve themselves.

What would you suggest? My priority is to create jobs. What would your priority be if we weren't spending our time on this useless piece of legislation, Art?

Mr Caligari: Maybe I should run for Parliament, after that.

Mr Baird: You'd be running in his riding.

Mr Caligari: My belief is the following: I try to be non-political in a lot of things I think, but what I do think about very strongly is family ties, families, good social fabrics within the community, those types of things. I have to agree, and I'll be frank with you, this is smoke. You guys are going to do it anyway, no matter what we say, no matter what the people of this province are telling you, and we're telling you, "Hey, maybe you're not doing it the right way." Why don't you listen? My only rationale for seeing you doing it the way you want to do it is because your ideology differs from mine, and because you believe that's the way things should be, there's nothing we can do to change your minds, except the next election.

The Acting Chair (Mr Ted Chudleigh): Thank you very much. We appreciate your taking the time to come in and make a presentation to us this afternoon.

DENNIS THOMPSON

The Acting Chair: Our next deputant is Dennis Thompson. Mr Thompson, welcome to the standing committee on resources development. We have 30 minutes together, which we can use for a presentation and for a question period. Would you commence your presentation, please.

Mr Dennis Thompson: Mr Chairman, members of the committee, other interested parties and observers, I am pleased this day to address a few aspects of Bill 49, An Act to improve the Employment Standards Act of Ontario. I hope I come to this committee with some appreciation for the interests of both labour and management, who are very well represented here today. First, I am married to a teacher. Second, I am an employer. Finally, my profession as a chartered accountant has fostered an appreciation for a very diverse client base composed of workers, employers and, not to be forgotten in all of this, Mr and Mrs Taxpayer.

However, when it comes to workplace issues, quite simply, I tremble. I would rather collect an unpaid account than conduct a performance review with an employee and I much prefer a thorny tax problem to conducting an interview. I'll do just about anything, but please, please, if you would only wear my personnel hat on occasion.

For this reason, my sympathies have to go out to Elizabeth Witmer in her resolve to eliminate certain duplications in the Employment Standards Act of Ontario. I think employment laws are something we have learned to accept and have actually gotten to like, because it spells things out very nicely for us. I have a tremendous appreciation for the tradition of the Employment Standards Act over the last 20 years.

I believe that the present government, though, has looked first of all at the most effective use of taxpayer resources in the administration of ESA. A question we have to ask ourselves this afternoon is, are there any duplications in the existing legislation? It seems to me that maintaining a system that tolerates alternative avenues of filing complaints has to be revisited. For this reason, I believe that employees to whom a collective agreement applies should be bound by their union's decision. By the same token, I believe that non-unionized employees will have to decide relatively early in the process whether to proceed through the Employment Standards Act or the civil courts. However, I do not believe that two weeks is a sufficient grace period to allow an employee to seek legal advice concerning a decision. Lots can happen in two weeks: a vacation, a death in the family, a major sickness. Therefore, I would encourage you to extend that period to a minimum of, let's say, six weeks.

I do have a concern about the \$10,000 maximum set out in section 21 of the bill, subsection 65(1.3) of the act. If an employee has undertaken to seek protection under the act, thereby deciding not to go the civil route, I do not believe the size of the claim should be relevant. I would wonder whether in all cases the quantum of the claim is indeed ascertainable early in the process. At a minimum, I would suggest that if an amount owing to an employee is greater than that for which an order can be

made under the act, he or she should be allowed to recover this excess in the civil courts.

What is most puzzling to me in this bill is the very tight time frame of six months within which an employee must file in order to seek redress through the ministry. To be blunt, I find it strange that this government would pursue such a direction when we see trends in other levels of government towards a more compassionate treatment of people who are victims of the system and don't have the resources and knowledge that a larger entity has at its disposal. Let me give you a "for instance" here. Revenue Canada now gives an individual one year to appeal an assessment under the Income Tax Act, and for the longest time during the period in which I have practised accountancy, that was 90 days. On that note, I would strongly suggest that the present period of two years be kept in place.

1530

In a more positive vein, there are some good things in the bill for workers. It makes it easier for employers who violate the act to be prosecuted. It extends the time period from 15 to 45 days for an appeal to an order or a refusal to issue an order. Now, obviously this also applies to the employer as well.

But I think the most significant enhancements in this bill are from an efficiency perspective. I believe that the caseload is becoming an unacceptable burden, with an average claim life of seven months. Of the claims presently on the books, over 40% are over 180 days old. I guess I would surmise that this is kind of the driving factor towards an extensive revision of existing legislation, one that clarifies certain provisions and gives more teeth to the director of the program, and in some case to the arbitrator in a collective agreement.

One of the facets of the changes which is most encouraging is the use of private collection agencies to collect unpaid wages and vacation pay. This will inevitably translate into a better use of ministry resources, as well as act as a deterrent to non-compliance with the act.

In summary, and I've been very brief, with a few changes, this can be good legislation which will allow a less intrusive approach for government with respect to the Ontario work scene. I'm of the opinion, though, that certain of these changes could jeopardize existing rights of some of the most vulnerable members in the working world, particularly those from the non-union sector composed, in a great part, by the poor, the uneducated, as well as those not well versed in the English language.

I would ask, therefore, as members of this committee, that you work to strike a fair balance between a better turnover in caseload, on the one hand, and the avoidance of those isolated situations where an individual is deprived because the clock is no longer ticking. With that, I guess my time is up.

The Acting Chair: Thank you very much; we appreciate your presentation. If we could start a seven-minute round of questions, seven minutes for each caucus.

Mr Lalonde: Thank you, Mr Thompson. It's a very well-presented brief. You just mentioned something that reflects what my colleague Mr Hoy said a little while ago. You mentioned that the bad employers, we could call them, should be revisited at times after receiving a

complaint. Probably the enforcement officer should at times visit those employers, because if they did it for one employee, they would do it for others after; I would imagine so. I really appreciate this point that you brought to our attention.

But I also think employers should be more educated towards the Employment Standards Act, especially in small communities. Very few are fully aware of the employment standards. After I left last weekend's visit we had up to London, I went back to my community and I started to speak about the employment standards to the employers in my area. I haven't seen one that was aware of the employment standards. We should have seminars. The government should take the responsibility of holding seminars to inform the employers.

You also mentioned that the claims should be left to the period of time that is indicated in the actual employment standard of two years. I fully agree with you on that, because it was mentioned all along, ever since we started these hearings, that people will decide not to complain because of being afraid to lose their jobs. If you do complain, the majority of time — probably only 5% of the time it will be the employees who are still on the job who would complain — the others will complain after leaving the job. If they'd done it for six months, the employee would have done it for probably two years. I agree. Over 1,500 of those claims that were uncollected before were mainly of groups or employers that closed shop or went bankrupt. But still, I feel that the amount, even though we only collected 25% in the past — not even quite 25% of the claims that were due to be collected — the government should have left this section in for two years to be able —

Mr Thompson: The 25%, you're talking total number of orders, or are you talking —

Mr Lalonde: The amount of money.

Mr Thompson: Dollars.

Mr Lalonde: Yes.

Mr Thompson: That's interesting. That's approximately the same percentage in respect to when an order is issued, as opposed to the number of complaints that are filed. That's approximately 25% as well.

Mr Lalonde: I have no other points, Mr Chair.

Mr Thompson: Your comment regarding education of the public, particularly employers — I think also a lot of employees are certainly not aware of things like vacation pay and that. It's interesting because the chamber of commerce in our area received some information that was prepared by the government recently which explains the act and it's in a format that can be circulated in a local newspaper. I think there are avenues in which both the private sector through chambers of commerce, as well as workers, can access this information and present it in a very readable form in the local media.

Mr Lalonde: You've just touched a point. I even mentioned that on my weekends, that probably chambers of commerce should invite at times a member of the labour department to explain to the people the Employment Standards Act. One employee said to me, "Jean-Marc, if you ever come up in the public telling the people what the standards of the employment act are, you'll be in trouble."

The Acting Chair: Thank you very much. We appreciate those questions. Can we move to the third party, Mr Martin.

Mr Martin: Thanks for coming today. Your presentation actually was quite interesting and you obviously put some thought into it. I'd just like to ask for some clarification and maybe we can have a little discussion about a couple of points that you made. One is the issue of duplication and how we define duplication. You've defined it I think by suggesting that there are various avenues people can take to have a grievance resolved. Some other folks might say it's simply different recourses to a seen or a felt injustice.

I think we have always prided ourselves, as a society, in the fact that we provide appeal procedures, appeal processes. They may be seen by some as simply duplicative avenues, and by others as sort of another place where, if they're not satisfied here with the response they get, and they're obviously in a situation where — for example, an employee hasn't been paid for a couple of days' work. Even if he's in the middle scale of pay, that's important, as a matter of fact. It's crucial in terms of buying groceries and paying the rent and meeting financial obligations. If he or she doesn't feel that one particular avenue is working because the person in that office — maybe the lineup is too long or there's a personality conflict, those kinds of things. I know when I've personally been involved in that kind of a scenario, I've always felt good that at least there was another avenue I could take. Is that what you mean by duplication?

Mr Thompson: Yes, I think my comment was relative to the prospect of a union determining a resolution of the problem for the benefit of the employee, and that be the sole avenue in this situation. I guess my perspective is that the union should, in most cases, be the best avenue of approach. I think you can add to society many levels or avenues of approach in resolving difficulties, but eventually it becomes very burdensome, because there are too many players involved.

1540

Mr Martin: It seems to me that in many areas of life today, whether it's health care or legal, the principle of a second opinion is one that we hold as something that everybody should have access to. But you're saying that in this instance employees — and there are unionized and non-unionized workers, there are big unions and small unions, and a whole variety of scenarios that can unfold — on an issue which has such tremendous importance re getting paid for your work or whether you get holidays or not or whether overtime kicks in, and the impact that will have on their ability to put food on the table or pay the rent, they shouldn't have a second opinion, they shouldn't have another avenue if they're not quite satisfied with what they're getting over here. You would call that duplication. I'm sure there are others out there who would simply say, "That's the way the system works for us in Ontario in 1996 and in many other areas; why not this one too?"

Mr Thompson: I guess I can envision a society in which an individual can be represented by their union, that the people who have been put in charge have

integrity and would plead the cause of an employee. My ignorance in this is maybe showing itself, but is there not a higher appeal to the Ontario labour congress that can be made?

Mr Martin: Yes, and that's what we're calling duplication here.

Mr Thompson: I don't see that as a problem.

Mr Martin: You had given the minister some kudos for moving to get rid of duplication. Well, this is what she's doing in this instance, in my read of it, in my understanding of it.

Just to move on to another piece, I want to talk to you for just a few minutes if I could about the question of efficiency. You talked about creating greater efficiencies. I think as we listen, we often hear about the process of moving from publicly paid collectors to collection agencies and the efficiency that will create.

We had a woman here this morning who talked about having to go before the Employment Standards Act and get some money that was owed her. She got 100% after she went through a process, and it was a rather stressful process for her. If we were in the scenario that we're imagining today under this legislation and she had to go to a collection agency, even if she collected 100% — which she probably wouldn't, because I suspect there will be an urgency about the collection agency people and a new environment that will evolve that will see lots of negotiation, "Can we get 50 cents on the dollar, can we get 60 cents on the dollar?" — ultimately, no matter how much they get, unless the employer pays the cost of the collector, which I don't see, there will be a portion taken off the top. So at the end of the day, for efficiency, you're going to take away from an employee, a worker who has worked for some wages, some portion of that which she is owed, because we would prefer to be efficient than to be effective, I would suggest in this instance. Is that what you're saying?

Mr Thompson: I think you're maybe reading into the situation a lot of situations in which certainly there is the potential for that kind of abuse and that kind of scenario, but as I see this legislation relative to primarily wages and vacation pay for relatively small claims, there are going to be a lot of them that are very perfunctory in the sense that they can be accommodated very expeditiously by another individual.

Mr Martin: And take a bit off the top.

Mr Thompson: As I understand it, the employer pays that; it's recoverable.

Mr Christopherson: It doesn't go to the employee, though.

The Acting Chair: Perhaps if we move to the government's question time we can have further discussion on it.

Mr Bill Grimmett (Muskoka-Georgian Bay): Mr Thompson, I understand from your comments that in your business life you've had quite a bit of experience with the Employment Standards Act. As we've proceeded through these hearings, it seems that most of the people who have made presentations are agreed that at present the collection part of the act does not appear to be working well. This is additional to some of the earlier questions to you. I was intrigued by your comment that you felt — correct

me if I'm wrong in recalling what you said — that the use of the private collection professionals would provide a deterrent to employers who wish to avoid the act. People I represent who own businesses — and myself being a business owner — don't wish to compete with people who don't comply with the Employment Standards Act. I wonder if I could hear a few more comments from you on how you feel this particular section of the proposed legislation will make the act work more efficiently in terms of collecting money.

Mr Thompson: In the sense of being a little more visible, being that it's in the private sector. What do we know about people who pursue according to the act? I know of very few situations where I have knowledge of it actually happening. It's kept relatively quiet, involving a few people. I think a private situation involves a little more publicity; it would be in front of the public a little more. That's my perspective there.

Mr Grimmett: Do you have experience with collection people yourself that would lead you to believe that they have an interest in pursuing this and that they are capable of pursuing the collections?

Mr Thompson: Yes and no. In some situations, in certain localities, we are very representative in terms of things like Small Claims Court and that particular function, but in other areas we may be a little bit weak at the present time. Possibly, though, the added business will maybe allow better people to get involved.

Mr Grimmett: So you see it as a potential for creating a bigger market and perhaps attracting more people into that industry?

Mr Thompson: I think it should add to the private sector economy, but we're not talking big dollars, I don't believe.

The Acting Chair: Thank you, Mr Thompson, for joining us today and making your presentation. We appreciate it very much.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1880

The Acting Chair: We now move to the Canadian Union of Public Employees, Local 1880, Cora-Lee Skanes. Welcome to the committee.

Ms Cora-Lee Skanes: Good afternoon. My name is Cora-Lee Skanes and I'm here representing the Canadian Union of Public Employees. As well as being a local union president for CUPE, I represent northern Ontario on the CUPE national executive board. I'm sure you've already read CUPE's brief, which was submitted to you in a previous hearing. It's not my intention to repeat this information, but to bring a different perspective to this issue.

The message that this government has been sending out since its election is that Ontario is open for business. The government feels that attacking the workers of this province is the way to entice employers into moving into this province. Since the Conservative government took control, labour relations are on the decline and labour protest is on the rise. Not only labour, but seniors, anti-poverty groups, social justice coalitions and various other human rights activists, are taking to the streets to send a

clear message: Ontario is not open for business the way this government wants business to run. Attacking the vulnerable, women, visible minorities, workers in service industries, domestic and home workers, seniors and children is not the answer to the economic problem in this province.

1550

This government has frozen the minimum wage, attacked injured workers under the changes in the Workers' Compensation Act, made workers more vulnerable under the changes in the Employment Standards Act and apparently will jeopardize workers further under the proposed changes to the Occupational Health and Safety Act. How can all these changes which affect workers in this province and are causing the worst labour unrest in some time be attractive to employers wanting to move into this province?

Some of the changes proposed and their possible impact under Bill 49 are as follows:

If workers file a complaint against an employer, there is no protection in place for them — 90% of workers do not file a complaint until after they quit their job — thereby forcing them to choose between their job and filing a complaint. A worker now would only have six months to file a complaint instead of the current two years, the employer is only responsible to compensate for a six-month period and the dispute could take years to resolve. On the other side, the ministry has two years to investigate and two years to recover the moneys owed. A minimum claim amount can be set and to recoup below the minimum or above the maximum the worker would have to go to court with no assistance in paying for the court costs. Meanwhile the worker cannot pay their rent or put food on the table for their children. Let us not forget that all these changes will allow the ministry to lay off more employment standards officers.

Unionized workers no longer have access to the ministry for complaints. They must be dealt with through the grievance process, which will result in higher costs in arbitration. This government has already removed the grievance settlement officers, mediators who helped both sides resolve issues cooperatively. How will this attract employers to this province? These disputes are a significant cost to the employer as well as the union.

Private collection agencies will be responsible for collecting moneys owed to workers. How can this make sense? Those agencies have to make money, so the cost to the employers will increase or the moneys legitimately owed to the workers will decrease.

Apparently this government is withdrawing the proposed changes dealing with minimum standards but will be reviewing them in the fall. It is important to address this issue so that people know before the changes happen what the impact will be.

Unionized workers at the bargaining table have always been able to depend on their rights regarding maximum hours of work, public holidays, overtime and severance pay. With the changes proposed under Bill 49, these protections are gone. Minimum rights can be bargained away at the table. Who will decide when greater rights are conferred when all matters are assessed together? Those workers who have been able to achieve additional

improvements through collective action could have those improvements stripped away by virtue of still being within the standards. Those of us who work in the public sector understand exactly what this means. Our employers receive their funding from this government, the same government that is introducing Bill 49. We understand this is a pressure tactic by the government to force our employers to attack our collective agreements. When the funding is reduced, the workers must pay, but how big a price?

How does this government hope to entice employers into this province when labour unrest will be on the increase? Opening up these basic worker rights is opening up a can of worms. It is declaring open season on workers, taking away rights those workers who went before us gave their lives and livelihoods to achieve. Let us not forget the Winnipeg 1919 general strike. Let us not forget those dedicated workers who gave their lives so we could enjoy protection against employers who would take advantage of the workers of this province.

We should be making minimum employment standards apply to all workers. The time has long past when people should be treated differently. Why should the standards apply to some and not to all workers? This bill should be addressing the inequities in the act, not creating more.

As a representative of CUPE, I bring the following message: We have only begun to fight. The non-unionized, the seniors, anti-poverty groups and unions have banded together to fight your agenda. You are attacking very basic principles and we will fight back. The label "unorganized" as it applies to the non-unionized of this province is a misnomer. This group is becoming more and more organized and joining forces with other groups, including unions, to stand up and be counted. The days of protest should be sending that signal very clearly to this government.

On a personal note, I have a 17-year-old son. The thing foremost in his mind is whether he will be able to get a job when he is finished his education. This government keeps talking about encouraging employers into this province, but each step it takes is a step backwards in rights for workers and still the jobs do not appear. As a mother, the thing foremost in my mind is: What kind of protection will my son have when he does enter the workforce? What quality of life will be afforded to him?

A previous Tory leader said, "Give me four years and you won't recognize this country." We hope this Tory government will not follow in his footsteps. We want to be able to recognize this province in four years.

It is becoming increasingly clear that all the sacrifices our parents and grandparents made are being counted as nothing. Must the sacrifices and the labour unrest repeat themselves? Have we learned nothing from history? Let us not allow history to repeat itself. Let us work together towards a harmonious working province where unrest does not occur.

Give us our basic rights and protection and stop attacking the backbone of this province: the people who make Ontario work, the workers who hold the future of this province.

I wish to thank you for this opportunity to present my views and I hope you will take these concerns seriously before passing this bill into law.

Mr Martin: Cora-Lee, thank you for coming today and making such a good presentation. All the points you make are certainly important and significant and need to be made, but for me the most important and salient point you make is actually the last one — that people are gathering together, people are recognizing what's happening to them and who's doing it to them. It's important, as this group travels around the province, and there are at least government members on the committee, that they know that you know and that you're not just here on your behalf. You're here on behalf of a whole lot of other folks out there who are more and more coming to understand and realize what's going on and know who's on whose side and who's doing it to them and who probably are being challenged, by way of the attack on their very basic rights and entitlements and quality-of-life issues, to look at what alternatives there might be out there to what this government is doing.

I put a motion on the table yesterday in Thunder Bay that asked for this committee to ask the government to withdraw this legislation and get on with the real agenda that we should be tackling, all of us together, which is the creation of work, which is the stimulation of the economy. To a person, everybody I talk to who voted for this government thought it was actually going to create work. There are even some folks on welfare who voted for this government because they thought they were going to get a job. They thought workfare meant they were going to get a good job, and they're sadly disappointed now.

I'm suggesting that this government withdraw this smoke-and-mirrors effort, An Act to improve the Employment Standards Act, a juxtaposition, an anomaly or a play on words — and the bill that's across the way at the Water Tower Inn, an act to improve tenants' rights, to protect tenants' rights or whatever — and get on with the business of creating work, which would give us the resources, energy and impetus we need to resolve a whole lot of these problems without having to create the kind of instability and stress that are being created. Given this opportunity, Cora-Lee, what else would you be doing, if you were they, as government today besides this act?

1600

Ms Skanes: I certainly wouldn't be putting this bill on the table. But I agree with you; I think the number one concern to everyone out there, and that's not speaking as a union member, is jobs. What kind of future does this province have? We already have enough people out of work. I heard a comment earlier about people getting claims disputed, and the majority of them get jobs. I'd like to know where those jobs are, because I know a lot of people who would like jobs.

I don't think this government understands yet the situation out there and how desperate some people are to find work. I think people are realizing more and more that workfare is not the answer, that it's not going to create jobs, because for whatever period of time you're there, not only are you taking good-paying jobs away from people and replacing them at this lower rate of pay, but at the end of the day the job still isn't there.

Mr Christopherson: Is there still some time left, Mr Chair?

The Chair: Yes.

Mr Christopherson: I also want to thank you for your presentation. So far when we've been talking about the issue of contracting out minimum standards, what the government calls flexible standards, we've been focusing on the fact that the smaller unions, isolated locals, are the most vulnerable, but we haven't really addressed the fact that even the Steelworkers and the Auto Workers in their larger places still will face pressure on the bargaining table and have bargaining chips on the table that otherwise wouldn't be there, because right now you can't put the issue of something less than employment standards on the table. Those of us who have actually sat at bargaining tables and understand how that process works realize that it is a process of tradeoffs, of compromise, of setting certain minimum goals and achieving them on both sides of the table.

But there's no win there for the union in doing this. It's going to show itself mostly in concessionary-type bargaining, where the employer feels it has the upper hand. The union's in a weak position and is defending everything it's got. If they can come out with that, they consider it a victory, and that will affect larger unions as much as smaller unions. As a member of the largest union in the country, I wouldn't mind your thoughts on that.

Ms Skanes: It's a very interesting comment, because you're right, it is about give and take. If we've been able to depend on nothing else, it's that there is a minimum. There is only so much the employer can take away from us. To be perfectly honest, over the last few years that's all that's been happening: They've been taking away; they haven't been giving.

It's very difficult to get your members to go out on strike. In this day and age, when we haven't had a raise for a while — there's no raises in the foreseeable future — it's even more difficult to go on strike because you're never going to recoup what you lose. People have families to feed. It's a sad state to have to look at the fact that we might be walking the picket line for what used to be minimum standards, because when those are on the table, we have nothing left to give in the give and take. Most of it's all been taken away from us.

I would hate to think that in what's supposed to be the best country in the world to live in, the most profitable province, or what should be the most profitable province, would put minimum standards on the line for its workers.

Mr Wettlaufer: Ms Skanes, I have a little bit of a problem with some of the presentations where they've said that the minimum standards, minimum rights, can be bargained away. Right now, under the present legislation, when the collective agreements come due, the employer can put everything on the table and ask for the rights that are in the collective agreements to be taken away. Can the employer not do that?

Ms Skanes: Yes, they can.

Mr Wettlaufer: Of course, the reaction of the union would be no. Under the proposed legislation, I don't see too much change to that. I see that it says here, "A collective agreement prevails over section 58...if the collective agreement confers greater rights." What's the difference?

Ms Skanes: I think our dilemma would be, who decides what greater rights are? I mentioned that in my brief. Who has the ultimate decision in whether trading off overtime for an extra week of vacation is a greater right?

Mr Wettlaufer: It would be a matter of negotiation, would it not?

Ms Skanes: The bill is not clear on that. If it's a matter of negotiations, now you're going to negotiate whether things are minimum or not? I could foresee a group going out on strike because nobody can decide what the minimum is. The government at some point is supposed to protect the people of the province, and I believe that's what these minimum standards do. There is a bottom line and the employers can't go below that. It horrifies me to think that bottom line could go away, because we see some of the things we'd lose in collective bargaining now. For this government to take away the minimum standards in this province, that's a horrific thought to me. I think it's inexcusable that the government would put that in this bill so that people could be laid open even wider through manipulation and being bullied by the employer to accept less than a minimum standard.

Mr Wettlaufer: You're looking at it from one standpoint; I'm looking at it from another. I see in this proposed legislation that there are some guarantees in here that weren't there under the previous legislation. I think with any legislation there's going to be some give and take. We hope, of course, that we can improve the employer-employee relationship with this new legislation. As I say, only time will tell. We hope we've improved it, but only time will tell.

I believe, Mr Chair, that my colleague has a question.

Ms Skanes: If I could just respond to one of your comments.

Mr Wettlaufer: Certainly.

Ms Skanes: I don't understand how you think you can improve the employer-employee relationship by removing minimum standards. We've heard stories about how there's manipulation going on with minimum standards. If you remove them, how do you possibly think that could improve employer-employee standards? The employee does not have any power here at all dealing with employers. The only power we do have as far as minimums go is the Employment Standards Act. So where would we be in a position to be able to fight the employer on that and how would that make it easier? I don't understand that.

Mr O'Toole: Yes, Cora-Lee, just quickly, I will try to respond to that in a way, if you don't mind my addressing you by your first name. This government's agenda may not be immediately likeable, but I think in the long term it will be an agenda that works, because the whole focus is jobs. That is it. The strategy is to have fairness, balance and an open-for-business — working with all of the constituent groups to create jobs. By being belligerent and us fighting and all the stuff, that is not part of what I think is a productive atmosphere for investment, and we need investment. I'm not some fat cat. We need investment.

Here's the key: I relate very personally. I have five children. I have a boy who's 17, and that's the very

reason I ran. His future looked very, very pessimistic, along with my other children's. That's honestly why I'm doing this. I honestly believe that we have to change the agenda. It was going this way.

I don't blame the previous government totally for the whole demise of the world and I am not so sophisticated to presume that I understand the world. But I only know one thing: It wasn't going up, it was going down. The current system needs to have some redress and I believe that you should be a legitimate part of that. I'm glad your presentation wasn't the same as the previous several from CUPE, and it was unique in that respect.

If you read the preamble to the act, it says very clearly, "Employment standards set out in the current act are 'minimum standards' that cannot be waived." Now, if you want to go to court and challenge that — you said something too that I think fundamentally — I'm not being critical of you — you're not listening to what you're reading; you're listening to someone else. Does that not say, "cannot be waived"?

For those vulnerable people, I do not believe the floor, as I hear, is being pulled away. That is not in here. I've not seen it. I'm not trying to be difficult with you. I think you fundamentally are into a bit of ideology difference, and I don't have a problem with that. But honestly, this bill and what you're reading — please read it. It's very simple. It's about three pages, four pages, when you pull out section 3.

I think the ongoing discussion about having some rights to negotiate — I certainly don't want to see less; I want to see a balance. I want to see the workplace participants take part in that discussion, and if the particular sector of the economy therein has a seasonal aspect to it or it has a fall-off in demand of product, how we can deal with the employees in that particular workplace?

1610

For the government of Ontario to set inflexible standards that say "everyone must," that doesn't work in Thunder Bay and Sault Ste Marie the same as in Toronto. The workplaces differ. The world of work is changing profoundly. You said and many of the presentations said small businesses are growing. Many people are working at home. They need protection. Many home workers, whether it's on computers or making clothes, need to have protections.

I believe in the minimum standards, but by the same token we have to be somewhat aware of whom we're really selling these products to. There is a market. It isn't run by this government, or anybody for that matter. Price and quality prevail in the marketplace.

Ms Skanes: Excuse me, can I just have an opportunity to —

The Chair: Okay, very briefly. I don't want to cut into Mr Lalonde's time.

Ms Skanes: You made the comment that the minimum standards are minimum standards and they can't be waived, but then your government's introducing flexibility.

Mr O'Toole: In unionized environments.

Ms Skanes: When something is flexible, how is there a minimum standard? That's where my concern is. If in fact the minimum standards can't be waived, then take

the flexibility out. We don't have a problem with that. If they can't be waived, write them in black and white. Say: "This is exactly what they are. There is no flexibility and these will be enforced."

Mr O'Toole: Do you want time off or time and a half? Would you prefer to have more time off with your family or time and a half?

Ms Skanes: Under my collective agreement, I have the ability to choose between the two.

Mr O'Toole: Isn't that one of the standards, though? You are already negotiating flexibility in your standards, which I support.

Mr Christopherson: That involves the minimum.

Mr O'Toole: That's all I'm saying. There will be no less then.

Mr Lalonde: Do you really think there was a need for a change or to amend the ESA? Was there a need to come up with some amendment of the actual Employment Standards Act?

Ms Skanes: I think there could probably have been some improvements to it, but there wasn't a burning need to make a change.

Mr Lalonde: I really feel at this time that we knew the system didn't work properly, because when we look at the amount collected in the past of the due account, it was only a little over 24%. I think probably we should have thought of retaining the 45 enforcement officers whom we are in the process of letting go, or we have started to let go, and giving them the proper training. They were getting dual tasks: They became collection agents and also they had to make sure that the law was enforced.

Ever since we started hearing people, what I've been hearing is that our people could not function properly because of the lack of training they had. Don't you think, at the present time, since they were given the task to do the collecting that was due to the employees, the percentage has gone down to a little over 24% of the amount due that was collected and it is really because the people we have in our office were not trained properly?

Ms Skanes: I don't know exactly what their job was and what training they've had, so I don't think it's within my right to say why the collections were so low. One comment I would like to make is that it always amazes

me when a government tries to change something from public sector to private sector and thinks the job is going to be done better and it's going to be done cheaper when in fact the private sector has to make money. So someone's going to lose at some point. Either the employer or the employee is going to lose, because someone has to pay that private collection agency. I think if it's the law and the law says a certain thing, then you have an avenue to follow when people break that law. I think maybe the government should be taking the legal steps it needs to take and shutting employers down if it has to to get the money back. I think there's been too much pussyfooting around about trying to get employers to pay, and it's the employees who pay the price for it.

Mr Hoy: I apologize that I wasn't able to hear your presentation, but I've been here for most of the questioning.

I just want to make a comment about the last comments made by the government speaker, something about you weren't understanding what you were reading or you weren't reading what you were seeing or whatever it was that he said.

I was elected in June for the first time, and I notice over here that many of the government members have a binder. I've never been in government. I'm pleased to be in opposition and I hope to be in government some day, but it wouldn't surprise me that they have virtually every question that could come up or any point of view that could come up by presenters like you, and they just look in their book and ask the next thing. I don't know that, because I've never seen one of those books, but it's just a comment. Whether they are free to give comments of their own or whether they're reading and understanding what they see of their own volition or not really is a question in my mind.

The Chair: Thank you, Ms Skanes. We appreciate your taking the time to appear before us here today.

That concludes our presentations here in Sault Ste Marie. We certainly thank those groups that took the time to make a presentation before us and to those who sat in the audience and listened in.

The committee stands recessed until 10 o'clock tomorrow morning in Sudbury.

The committee adjourned at 1617.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Mr Bart Maves (Niagara Falls PC)

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Mr Jerry J. Ouellette (Oshawa PC)

Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Toby Barrett (Norfolk PC) for Mr Ouellette

Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
for Mr Tascona

Mr John R. O'Toole (Durham East / -Est PC) for Mr Carroll

Mr Derwyn Shea (High Park-Swansea PC) for Mr Maves

Mr Wayne Wettlaufer (Kitchener PC) for Mrs Fisher

Also taking part / Autres participants et participantes:

Mr Tony Martin (Sault Ste Marie ND)

Mr Bud Wildman (Algoma ND)

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Avrum Fenson, research officer, Legislative Research Service

CONTENTS

Tuesday 27 August 1996

Employment Standards Improvement Act, 1996, Bill 49, Mrs Witmer / Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, M^{me} Witmer	R-1175
Sault Ste Marie Chamber of Commerce	R-1175
Mr Gene Nori	
Mr Jody Curran	
Mr Gord Acton	
Algoma Community Legal Clinic	R-1179
Ms Gayle Broad	
Mr Mark Klym	
United Steelworkers of America, Local 2251	R-1183
Mr Ronald Bouliane	
Mr Del Vandette	R-1187
Canadian Union of Public Employees, Local 16	R-1191
Ms Della Case	
Ms Lynda McFarling	
Sault Ste Marie Business and Professional Women's Club	R-1195
Ms Shirley Mantyla	
Ms Marlene Mathieu	
Ms Sharon Selkirk	
Sault and District Social Justice Coalition	R-1198
Ms Renata Fisher	
Sault Ste Marie and District Labour Council	R-1202
Mr Eric Greaves	
OTF All-Affiliates Coalition of Algoma District	R-1206
Mr Art Caligari	
Ms Elizabeth Szczotka	
Mr Dennis Thompson	R-1210
Canadian Union of Public Employees, Local 1880	R-1212
Ms Cora-Lee Skanes	



R-27

R-27

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**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 28 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 28 août 1996

The committee met at 1001 in the Ambassador Hotel, Sudbury.

EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): Good morning. I call the committee to order on this, our eighth day of hearings on Bill 49, An Act to improve the Employment Standards Act. We're certainly pleased to be here in Sudbury today, our third and final stop in the north. Welcome to all the groups making a presentation.

UNITED STEELWORKERS OF AMERICA,
LOCAL 6600

The Chair: Our first group up today is the United Steelworkers of America, Local 6600, Retail Wholesale Canada, Canadian service sector division. Good morning, gentlemen. Just a reminder that we have 30 minutes for you to allocate as you see fit, divided between presentation time or question-and-answer period. Please proceed.

Mr Denis Dallaire: I'd like to thank everyone for the opportunity to be here this morning. The United Steelworkers of America is an international trade union with over 700,000 members throughout Canada, the US, Puerto Rico, the Virgin Islands. More than 170,000 of those members are in Canada.

The Steelworkers is Canada's most diverse private sector union. In 1936, the Steelworkers began organizing employees in the steel industry and grew to become Canada's largest union in containers, chemicals, aluminum, pipe, mills, mines, smelters and other metal industries. The Steelworkers has more recently extended its membership to workers in almost every sector of the economy, including electronics, plastics, rubber, brick, glass, textiles, furniture, warehousing, retail, wholesale, department stores, building service, office and technical jobs, hospital and health care, financial services, professional occupations, dairy, bakery and confectionary, culinary and optical industries, food processing, hotels and restaurants, taxis, security guards, fish plants and many others.

In Ontario, the Steelworkers encompasses two distinct districts: District 6, and its retail, wholesale and department store union, Canadian service sector division. These two districts currently encompass more than 100,000 Ontario members employed in over 500 companies.

We believe that Bill 49 will seriously jeopardize the rights of workers to basic employment protection in Ontario. Premier Harris and Labour Minister Elizabeth Witmer have publicly proclaimed the Bill 49 amendments to be minor changes which amount to mere housekeeping. If the government truly believes this, it should heed labour's warnings and seriously reconsider its position before depriving workers of the minimum standards which currently provide basic employment protection.

These amendments will foster severe labour relations confrontations and diminish access to justice for Ontario workers by stripping unionized workers of legislated minimum workplace standards which resulted from the hard-fought struggles of the Steelworkers, as well as other trade unions, and privatizing the government's responsibility for arbitrating, regulating and enforcing minimum workplace standards, thereby placing this burden on the backs of workers.

These amendments will make it easier for employers to deny their employees the minimum wages and benefits set out in the Employment Standards Act. More simply put, Bill 49 is a gift to unscrupulous Ontario employers, who will view the amendments as an opportunity to gut minimum workplace standards. Employers will realize that the costs and pressures of self-regulation of this new system will force employees to agree to a settlement or compromise of an outstanding claim against their employer, even where the employer has clearly and unconscionably violated the act.

The Steelworkers ask this government to consider the effects of Bill 49 on working people and the labour relations environment in this province. We urge this government to have regard to the implications of Bill 49 and withdraw the proposed legislative changes.

Gutting the Employment Standards Act by contracting out of employment standards: I find that really ludicrous and I'll tell you why. This amendment allows employers to negotiate lower standards for hours of work, overtime pay, public holidays and paid vacation in organized workplaces. Until now, these basic standards were untouchable. Furthermore, no other jurisdiction in Canada allows employers to contract out of the legislated minimum standards protection afforded to workers. This amendment is enough for the Steelworkers to stand in opposition to this bill as a whole.

The intent of the act has always been to impose minimum workplace rules and standards which society deems necessary for all of its members. While parties are free to contract for higher benefits than those contained in the legislation, they are not able to undercut the statutory minima, often referred to as the floor of rights. This amendment will eliminate the floor for hours of

work, overtime pay, public holidays and vacation with pay for organized workers. There is no justification for this elimination of basic standards for working people in a society which values the universality of, at least, basic minimum rights.

The central goal of our industrial relations system is to facilitate negotiated settlements between labour and management. This amendment runs directly counter to that end. These new issues will prolong bargaining in all workplaces, but especially where certain employment standards minima may be actually operational within collective agreements, such as in the retail and service sector, security guard industry, taxi industry, and others. Settlements for newly organized unions will be even more difficult in these sectors, where entitlement to overtime pay, public holidays, vacation pay and hours of work will be put in issue.

Disputes will undoubtedly arise where employers try to force unfair working conditions on employees by attempting to bargain tradeoffs with respect to overtime pay, public holidays, severance pay and vacation pay in exchange for, for example, increased hours of work. The position of the Steelworkers is clear and simple: Every employer proposal to increase hours of work in exchange for improvements in other rights will be met with clear and unswerving resistance from its bargaining committees.

The Steelworkers believe that all bargaining agents should negotiate hours of work which will increase workers' choices regarding when and how often they work, reduce on-the-job stress and reduce family/work conflicts, promote safer workplaces and put pressure on employers to hire and train more people.

The proposed amendment requires unions, employers and arbitrators to undertake the difficult task of comparing apples and oranges and determining whether collective agreements comply with subsection 4(3) of the amended act, and provides greater rights in total for hours of work, overtime pay, public holidays, vacation with pay and severance pay when assessed together. This accounting mess is compounded as the parties are being asked to value and compare purely monetary rights such as overtime pay and severance pay, non-monetary rights such as hours of work, and mixed rights for vacation and public holidays.

For example, an employer may propose that employees work a sixth shift every Saturday in exchange for double-time rates on that day. A bargaining agent may not agree that a diminished quality of life can be compensated by more money, and therefore determine that this tradeoff does not result in greater overall benefits to employees. Complex arbitration litigation may result if the proposal is eventually accepted by the bargaining agent. If the bargaining agent does not accept it, the result may be impasses in collective bargaining and bitter and protracted labour disputes.

1010

The fact that there has been no attempt in Bill 49 to address how a negotiated package is to be evaluated suggests that the purpose of this provision is to allow employers to waive minimum standards rather than negotiate greater flexibility in achieving minimum standards.

I would now like to pass it on to Robert McKay, national representative of the retail-wholesale division of the Steelworkers.

Mr Robert McKay: Privatizing enforcement: passing the costs on to unions, which deals with section 20 of the bill, section 64.5 of the act: The government is abdicating its historic function of enforcing the act and forcing it on to the shoulders of organized labour. Bill 49 eliminates recourse by workers to the considerable investigative and enforcement powers of the Ministry of Labour. In its place, unionized employees are required to use the grievance procedure under the collective agreement to enforce their rights under the act. As a result, unions will now bear the burden and cost of investigating, settling or determining complaints of employer breaches through the collective agreement grievance and arbitration procedure. Bill 49 contemplates that an arbitrator, whose costs will be shared by the union and employer, will have all of the powers now exercised by the employment standards officers, referees and adjudicators.

Hardship on unions: The financial, legal and human resource burden of managing every employment standards complaint is staggering. The change from an individual to a union-driven procedure poses a tremendous hardship on unions, which will now bear the burden of investigation and enforcement and their accompanying costs. As well, Bill 49 will require unions to become familiar with the pre-existing and complex jurisprudence under the act, because unions and not individual complainants will be responsible for determining whether to proceed with a complaint.

Refusals by unions to proceed with a complaint may lead to dissension within the bargaining unit. Added pressure to proceed with complaints through the grievance procedure will ultimately tax the resources of the union. The existing duty of fair representation has not in the past required unions to represent employees in respect to employment standards, but Bill 49 expressly contemplates that unions that do not proceed to enforce the act may be faced with complaints concerning fair representation by members.

There is also some ambiguity about when unions will begin to assume responsibility for administering employment standards complaints. As the proposed legislation stands, a union is responsible for enforcing the act after certification and the issuance of notice to bargain a first collective agreement if an employer subsequently enters into a collective agreement. How is it possible for the union, without a collective agreement grievance and arbitration provision in place, to process an employment standards complaint? Is it possible that these complaints will need to be held in abeyance until a first collective agreement is achieved? If a first collective agreement is never achieved and complaints that had been held in abeyance are subsequently referred to the employment standards branch, the delay in filing the complaint with the branch may result in an employee being unable to recover money due to the proposed six-month limitation period for filing complaints and the one-year limitation period for recovering back pay.

The government's minor changes to the act allow it to unfairly pass off the obligation and associated liability

involved with administering a public statute on to employees and their unions, when it's the employers who have violated its provisions.

Loss of investigation: Unlike the referee who now adjudicates these matters, unions will not have the benefit of an employment standards officer report and other documents obtained in the course of an ESO investigation. Although the arbitrator will be cloaked with the power of the employment standards officer, the arbitrator will only compel production of relevant documents after convening a hearing and receiving submissions and possible evidence to convince him or her to compel disclosure. In short, the litigation will be difficult and expensive and there will be enormous opportunities for employer counsel to obstruct access to information/evidence. These factors will make it very difficult for unions to enforce and prove claims.

The absence of an investigation stage will be extremely problematic in dealing with successor employer and common employer complaints under the act where pre-hearing production is essential. The information necessary to succeed on such a claim is often solely within the knowledge of the employer. Unions will be forced to file and then proceed to litigate these complaints before an arbitrator in order to compel production and disclosure. Disclosure at this late stage may result in the union finding that there was little basis for the complaint. This would have been apparent much earlier in the process had there been an opportunity for an investigation by an employment standards officer.

Bill 49 is also bad for the unorganized worker, decreasing employer liability and privatizing enforcement. The proposed amendments will affect workers across the province whether covered by collective agreements or employed at non-unionized workplaces. The amendments affecting unorganized workers will seriously diminish their ability to collect unpaid wages and benefits owing by their employer. The effect of these changes will be felt hardest by Ontario's most vulnerable workers. Why is the law allowing employers who violate Ontario's most basic employment standards to benefit in this unconscionable manner?

Limiting employee options by barring both civil and statutory remedies, which deals with sections 19 and 20 of the bill, sections 64.3 and 64.4 of the act: These amendments force employees to choose between pursuing their claim through the more expeditious and cost-effective path of making a claim through the ministry or filing a notoriously lengthy and prohibitively expensive civil suit in the courts. The injustice of the choice which employees are faced with is exacerbated by the proposal that claims made through the ministry are capped at \$10,000. In effect, these provisions act in tandem to ensure that the greater the amount of money an employer owes to an employee, the less likely the employee will be to collect the full amount.

Employees who file a complaint under the act will be forced to decide in a two-week period whether to continue under the act or to withdraw their complaint and pursue a civil remedy. Those unaware of their legal rights may be precluded from commencing a civil action unless they obtain the necessary legal advice within the short

two-week period. Employees who initiate a civil claim but decide they no longer wish to pursue it do not appear to even have the two-week time limit to change their minds.

Decreasing employer liability by shortening limitation periods: The shortening of limitation periods from two years to six months will have a profound effect on the amount of unpaid wages and benefits employees will be permitted to collect under the act. The shortening of time for the filing of a claim will be particularly detrimental to employees who are unrepresented and unknowledgeable about their rights.

In addition, although employees are prohibited under the act from retaliating against employees who lodge complaints by firing them, as a practical matter this prohibition is ineffective. Most employees realize this. Because they understand that they have little protection against an unscrupulous employer, they do not come forward until they have left their job to complain about violations which occurred during their employment. In the end, workers who fail to file within the six-month time limit for claims through the ministry will be forced to sue civilly in order to seek redress where the employee must bear the significant cost of litigation, since the Ontario legal aid plan no longer covers most employment-related cases. In these circumstances, the reduced limitation period will translate into reduced liability for offending employers at the expense of working people.

Decreasing employer liability, which deals with section 21 of the bill, subsections 65(1.3) to (1.6) of the act: This amendment proposes to arbitrarily cap the maximum amount which can be received through the filing of a complaint with the ministry at \$10,000. Employees who want to pursue claims over \$10,000 are faced with a difficult choice: resort to costly court procedures or forgo recovering money owed in excess of the \$10,000 limit by filing a complaint under the act. Both options diminish the likelihood that an employee will recover the wages and benefits they have already worked for.

The amendment also proposes to impose an arbitrary minimum limit on claims that the ministry will enforce through its officers. If such a limit is set, employees will be forced to go to Small Claims Court to pursue such claims, or simply forgo the wages owed to them. The net effect of imposing a minimum claim limit is likely to be that employees will simply abandon claims for small amounts of money.

1020

Privatizing enforcement: The new law would have private collection agencies assume all powers of collection presently available to the employment standards branch. This change reveals a basic departure from historical public policy regarding the collection of debts owed to workers in Ontario. This amendment will result in many workers no longer receiving 100% of the money recovered from employers. This is because when a collection agency collects less than the total amount owing to an employee pursuant to a compromise or settlement, or the refusal or inability of the employer to pay, Bill 49 will enable the apportioning of the amount among the collector, the employee and the government. In other words, the collector is permitted to take a portion

of the minimum wages and benefits owing to the employee.

The number of employees who will end up paying the collection agency out of their own pockets will be great as private collection agencies will pressure employees to accept a compromise or settlement from the employer in order to cut down on the amount of time the agency has spent for collection purposes and to ensure them a guarded fee or disbursement. The new system will also encourage employers to negotiate fiercely with the collection agency in order to reduce their liability under a compromise or settlement. It is clear that it is only workers and not private collection agencies or employers who stand to lose from this amendment.

There are some positive amendments. The Steelworkers support three proposed amendments in Bill 49. Section 8 of the bill, section 28 of the act: Section 8 of the bill provides that entitlement to vacation pay of two weeks per year accrues whether or not the employment was active. To be clear, we do not see this as a statutory improvement, because this change codifies pre-existing jurisprudence of referees.

Section 5 of the bill, subsection 7(4) of the act: Section 5 of the bill requires the employer to pay termination pay within seven days of the employee's termination.

Section 12 of the bill, subsection 42(4) of the act: Section 12 of the bill provides that the calculation of service and length of employment is to explicitly include time on parental and pregnancy leave, thus codifying pre-existing jurisprudence of referees.

The purpose of the act is to impose minimum acceptable workplace rules below which society is not prepared to allow workers to fall. Bill 49 obliterates the concept of an overall minimum package of standards for unionized workers. It dramatically shifts the burden of enforcement on to the shoulders of unions. This shift will undoubtedly cause irreparable harm in unionized workplaces to the functioning of grievance arbitration procedures. It will foster labour relations confrontations in the collective bargaining regime.

For workers without unions, the likely result is that their rights will simply not be enforced.

The bill undermines many of the basic principles on which minimum standards legislation has historically been based. We believe that both organized and unorganized workers will bear the burden of its harsh and unprecedented attack on all of these basic principles. All of which is respectfully submitted.

I'd make one comment, that I was happy to see that the minister recently has at least tabled the area where trade unions have to negotiate minimum workplace rules with regard to hours of work, overtime, public holidays etc. While we're happy to see that that's been tabled, we're not happy to see that we haven't been given very clear assurances that that issue is completely withdrawn, and that's why it still forms a part of our brief.

With regard to page 9 of our brief, and we talked about the ambiguity about unions first beginning to assume responsibility for administering employment standards complaints, I'm currently in the process of waiting for a decision after a lengthy round of collective

bargaining. We were certified for the Metropolitan Stores in Marathon, Ontario, in December 1994. We still don't have a collective agreement, and this ambiguity about when unions have a responsibility in terms of administering employment standards complaints certainly creates a large hardship on the employees and on the trade union because there has been a turnover of employees in that particular store and it's difficult for us to keep up with it. We may not hear about a complaint for a long time after it takes place, and the way the act is written, it's just not fair in terms of restricting the employees and having to bring it forward within a six-month period.

Whether this committee realizes it or not, it's a different world in the workplace, particularly in the sector that I represent, that being retail. I'm referring to page 13 of our brief, where in the second paragraph we've made note that employees are unaware of their civil rights, and we go on to mention in the brief that they're afraid to come forward. That's not at all uncommon in the retail industry. In fact, I represent a group of taxi workers in Thunder Bay, and they only just recently indicated to me that for the last two years they haven't been paid properly and subsequently are wanting to file a complaint through the employment standards branch. To take away their right to be able to go back two years would be really unfair, because it's been the employer who has really capitalized and exploited them and made use of their time. So for them to be denied under this bill the right to be able to go back and collect is most unfair.

Employees in retail, even today under the Employment Standards Act, do tend not to be treated fairly. They currently, in many of the small retail locations don't get vacation pay, don't get statutory holidays. They're told that they have to work on Sundays even though the act gives them some rights. It's difficult enough enforcing what's currently there, and all you're going to do by implementing this particular bill is create even more hardships on those in the retail field, and in fact what they'll do is they'll never become solid citizens. They'll be transient in the business and they'll just move from job to job and from one exploitation to another.

Mr Dallaire: Just in closing, I'm kind of curious as to why we need these cuts and how you justify them. We look at your track record in the last year in governing, and it's just been atrocious. We look at the Bill 40 repeal of the ban on scabs. It has ended an unprecedented period of labour peace in Ontario.

Since the anti-worker Bill 47, Ontario has seen bitter strikes and lockouts. Look at OPSEU and the Great Lakes College and the Ontario Jockey Club. In the first months of 1996, Ontario had already lost more days of work to labour disputes than any other full year under the NDP government.

You have ended successor rights for Ontario government employees, stripping rights enjoyed by all other unionized workers in the province. Gains won by workers can now be scrapped when a public service is privatized.

You have slashed more than 12,000 government jobs. This is causing enormous disruption in vital services and in the lives of workers who devoted their working careers to serving the Ontario public.

In Bill 26, the government also took away pension protection from government workers that is available to all other employees in Ontario.

You have abolished the Workplace Health and Safety Agency, cut back on lab and technical support for health and safety inspectors, rolled back requirements for health and safety training and established a freeze on the minimum wage to be kept in place until the United States and other provinces have overtaken Ontario's previously leading role. The list goes on.

You have planned to eliminate Workers' Compensation Board coverage for many common injuries, giving employers control over benefits and slashing benefit levels for injured workers; refused the NDP demands for public hearings on government's discussion paper which adopted the business agenda for WCB without any effort to address the concerns of labour and injured workers; refused the NDP demands for public hearings on government's discussion paper, which adopted the business agenda for the WCB without any effort to address the concerns of labour and injured workers.

You have tried to ram through far-reaching changes to the Employment Standards Act, the foundation of basic rights of union and non-union workers in Ontario, and announced a review of the Occupational Health and Safety Act; you expect to set the stage for an attack on the right to refuse unsafe work; repealed the NDP's employment equity legislation; cut back pay equity adjustments in the public sector and abolished the proxy method of determining eligibility for pay equity.

You have infringed on the independence of arbitrators by writing into legislation that in cases involving teachers, police, firefighters and hospital workers, the arbitrator must consider the employer's ability to pay, which usually means willingness to pay.

These are all the reasons that we're here today and we urge you to reconsider.

1030

The Chair: Your timing is within 20 seconds of being perfect. Thank you very much for taking the time to make a presentation before us here today. We really do appreciate it.

UNITED STEELWORKERS OF AMERICA, LOCAL 6500

The Chair: That leads us to our next group, the United Steelworkers of America, Local 6500. Good morning and welcome to the committee. Again, we have 30 minutes for you to divide as you see fit between presentation time or questions and answers.

Mr Barry Tooley: Good morning. My name is Barry Tooley. I'm the financial secretary with Local 6500 Steelworkers in Sudbury.

In introducing the Bill 49 amendments on May 13, 1996, Labour Minister Elizabeth Witmer claimed she was making housekeeping amendments to the Employment Standards Act. She described Bill 49 as facilitating "administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures."

The truth is that what was presented as minor technical amendments contained substantive changes, changes which clearly benefit employers and diminish access to

justice for both organized and unorganized workers, particularly the most vulnerable in the workforce. These changes will make it easier for employers to cheat their employees and harder for workers to enforce their rights. It strips unionized workers of the historic floor of rights which they have had under Ontario law for decades. This submission is made on behalf of Local 6500, United Steelworkers of America, located in Sudbury and representing workers in the nickel industry with 4,700 members. The following sections of this submission capture our views on the key amendments.

(1) Flexible standards, section 3 of the bill, subsection 4(2) of the act: The bill contains a fundamental change to Ontario labour law by permitting the workplace parties to contract out important minimum standards. Prior to Bill 49, it was illegal for a collective agreement to have any provisions below the minimum standards set out in the Employment Standards Act. Bill 49 allows a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay if the contract confers greater rights when those matters are assessed together.

This measure erases the historic concept of an overall minimum standard of workplace rights for unionized workers. Employers are now free, for example, to disregard this previous floor of rights and have the opportunity to attempt to trade off such provisions as overtime pay, public holidays, vacation pay and severance pay in exchange for increased hours of work. How is one to weigh or measure whether or not a tradeoff of this kind confers greater rights is left unstated. It will become an issue in its own right.

For example, a retail store owner could ask an employee to cover all hours of a store's operation, say 50 to 60 hours per week. The employer could argue, however, that due to the inclusion of enhanced severance pay and an extra week of vacation, that is, three weeks rather than the minimum two weeks currently spelled out in the Employment Standards Act, that this confers greater rights when assessed together. In short, the parties are being asked to value and compare non-monetary rights (hours of work) with purely monetary rights (overtime pay, severance) and mixed rights (vacation pay, public holidays). Given the inequality of power between employers and employees, including many who are unionized, circumstances in which detrimental tradeoffs are agreed to despite the measurement problems referred to can easily be envisioned.

This proposed amendment, therefore, will allow employers to put more issues on the bargaining table which were formerly part of the floor of legislated rights. It will make settlements more difficult, particularly for newly organized units and small service and retail workforces. It will also enable employers to roll back long-established fundamental entitlements such as hours of work, the minimum two weeks of vacation, severance pay and statutory holidays by comparing these takeaways to other unrelated benefits which can together be argued to exceed the minimum standards.

The potential of this amendment alone to erode people's standard of living should be enough to make the drafters of the amendment rethink, if not radically alter,

Bill 49. It is certainly enough to make Local 6500 USWA stand in opposition to the bill as a whole.

Viewed another way, if a central goal of the industrial relations system has been to facilitate negotiated settlements, this amendment runs counter to such an end. It will make settlements more difficult; it will likely result in more acrimonious relations and industrial conflict. What were in the past minimum benefits protected by law will now become permissible subjects for bargaining, arbitration and labour disputes. Further, if significant erosion in minimum entitlements becomes widespread in the many bargaining units where employees do not have sufficient bargaining strength to resist employer demands, it will indirectly impact on the standard of living and working conditions of all Ontarians.

The shortsighted may see this rush to the bottom as helping employers to become competitive, but the more sane will question whether this makes for higher productivity, better workplace relations, increased consumer purchases or an improved quality of life in Canada's most industrial and populous province.

I realize that this particular flexibility under the act has been tabled and we have great concern because it's still under review, and that's why we've included our particular concerns on this piece of the legislation. We are very concerned that the flexibility issue may come back at a later time.

(2) Enforcement under a collective agreement, section 20 of the bill, section 64.5 of the act: Currently, under the Employment Standards Act, unionized employees have access to the considerable investigative and enforcement powers of the Ministry of Labour. This inexpensive and relatively expeditious method of proceedings has proved useful, particularly in situations of workplace closures and with issues such as severance and termination pay. The Bill 49 changes eliminate recourse by unionized employees to this avenue and instead require all unionized workers to use the grievance procedure under the collective agreement to enforce their legal rights. The union will bear the burden of investigation, enforcement and their accompanying cost.

The director can make an exception and allow a complaint under the act where he thinks it appropriate, but for all practical purposes the enforcement of public legislation has been privatized.

1040

Should these amendments pass, the collective agreement will have the Employment Standards Act virtually deemed to be included in it. A union will also face the potential of claims against it by dissatisfied members. Although the existing duty of fair representation has not in the past been seen as requiring a trade union to represent employees in respect to employment standards, with this amendment change a union can be faced with complaints concerning fair representation by members. This could well mean that a failure of enforcement will be seen by the labour relations board as constituting a breach of the duty of fair representation. Thus, unions will face both additional obligations and additional liability costs.

Arbitrators will now have jurisdiction and make rulings that were formerly in the purview of an employment standards officer, a referee or an adjudicator. They will

not be limited by the maximum or minimum amounts of the act. However, arbitrators lack the investigative capacity of the employment standards officers and may not be able to match the consistency of the result that the act has had under public enforcement. Most important, employers could argue that as boards of arbitration do not have the critical powers to investigate whether particular activities or schemes were intended to defeat the intent and purposes of the act and its regulations, such cannot be determined. In such circumstances, unionized employees could well be left with no recourse whatsoever. This is particularly evident in cases of related employer or successorship provisions of the act. It is difficult to see how such provisions can be applied when the successor or related employer may well not be party to the arbitration proceeding.

(3) Enforcement for non-unionized employees: Sections 19 and 21 of the bill, sections 64.3, 64.4 and subsection 65(1) of the act. With these amendments, the Ministry of Labour is proposing to end any enforcement in situations where they consider violations may be resolved by "other means," namely the courts. In other words, the amendments would download responsibility for the enforcement of minimum standards for non-unionized workers. Employees would be forced to choose between making a complaint to the employment standards branch or filing a civil suit in the courts. Responsibility for enforcement is also downloaded on to non-unionized employees by limiting the amount recoverable through employment standards to under \$10,000. Currently there is no limit on what is recoverable. What an employer owes an employee is generally what he has to pay. An employee who files a claim at the Ministry of Labour for severance and termination pay is precluded from bringing a civil action concerning wrongful dismissal and claiming pay in lieu of notice which exceeds the statutory minimums.

The effect of these amendments is that those employees who have chosen the more expeditious and cost-effective path of claiming through the ministry will have to forgo any attempt to obtain additional compensation through the courts. Legal proceedings are notoriously lengthy and prohibitively expensive for many, even though they may be entitled in common law to more than the statutory minimum under the Employment Standards Act.

An employee who seeks to obtain a remedy in excess of \$10,000 and who can afford to wait the several years a civil case will take, and at the same time pay for a lawyer, will have to forgo the relatively more efficient statutory machinery in respect of even those amounts clearly within the purview of an employment standards officer.

Employees who file a complaint under the act will have only two weeks to decide whether to continue under the act or withdraw their complaint and pursue a civil remedy. Those unaware of their legal rights may well be excluded from commencing a civil action unless they obtain the necessary legal advice within the short two-week period.

Just as provisions bar civil remedies in section 64.3, there are minor provisions in 64.4 precluding an employee who starts a civil action for wrongful dismissal from claiming severance or termination payments under

the act. Other provisions are also prohibited under the act once a civil action has started, such as an employer not paying wages owed, failure to comply with the successor rights in the contract service sector etc. Employees who initiate a claim but decide they no longer wish to pursue their civil suit don't appear to have even the two-week time limit to change their mind. Rather, they appear to have no right to reinstitute a complaint under the act.

(4) Maximum claims, section 21 of the bill, subsection 65(1) of the act: The amendments introduce, as noted above, a new statutory maximum amount that an employee may recover by filing a complaint under the act. This maximum of \$10,000 would appear to apply to amounts owing of back wages and other moneys such as vacation, severance and termination pay. There are only two exceptions, such as for orders awarding wages in respect of violations of the pregnancy and parental leave provisions and unlawful reprisals under the act.

The problem of implementing such a cap is that workers are often owed more than \$10,000, even in the most poorly paid sectors of the workforce such as foodservice, garment workers, domestics and others. Indeed, workers who have been deprived of wages for a lengthy period of time are the very employees who will not have the means to hire a lawyer and wait the several years it will take before their case is settled. In effect, therefore, this provision will encourage the worst employers to violate the most basic standards, while at the same time compounding the problems for those workers who have meagre resources.

Bill 49 also gives the minister the right to set out a minimum amount for a claim through regulation. Workers who make a claim below the minimum, which is as yet unknown, will be denied the right to file a complaint or have an investigation. Depending upon the amount of this minimum, it could well have the effect of employers keeping their violations under the minimum in any six-month period and thereby avoiding any legal penalty.

(5) Use of private collectors, section 28 of the bill, new section 73 of the act: The proposed amendments intend to privatize the collection function of the Ministry of Labour's employment practices branch. This is an important change, providing one of the first looks at the government's actual privatization of a task which has traditionally been public. Private operators will, should these proposals be implemented, have the power to collect amounts owing under the act.

A fundamental problem with regard to the act has, for some time now, been the failure to enforce standards. This is no less true with regard to collections. The most frequent reason for the ministry's failure to collect wages assessed against employers has been the employers' refusal to pay. The answer to this problem, according to the proposed amendments, is not to start enforcing the act, but rather to absolve the government of the responsibility to enforce the act by farming out the problem to a collection agency.

In addition, the employment standards director can authorize the private collector to charge a fee from persons who owe money. Should the amount of money collected be less than the amount owing to the employee

or employees, the regulations will enable the apportioning of the amount among the collector, the employee or employees and the government.

Where the settlement is under 75% of the amount owing, the collector is required to obtain the approval of the director, but this still allows the collector incredible leeway, if not outright abuse, with someone else's money. The danger here is that even persons whose earnings put them below the poverty line and who are owed money under the act could well be required to pay fees to the collector. A minimum-wage worker at \$6.85 per hour, for example, could not only receive less money than what is owed but also have to pay for it to be collected. Surely this raises ethical questions for the drafters. We would suggest that while such an approach may be appropriate in commercial transactions, it is neither morally justified nor appropriate in these circumstances. We want the system of public enforcement to be maintained and improved.

1050

This provision will likely lead to employees receiving considerably smaller settlements. As well, they open the door for unconscionable abuse. Local 6500, United Steelworkers of America is gravely concerned that employees, particularly the most vulnerable, will be pressured to agree to settlements of less than the full amount owing as collectors argue, if only for reasons of expediency, that less is better than nothing. Having at the same time to pay a collector amounts to nothing less than legalized theft. At the same time, unscrupulous employers will de facto now find their assessments for violations lowered and thus be encouraged to continue their violations of minimum standards.

Limitation periods, section 32 of the bill, section 82 of the act: The proposed amendments in Bill 49 significantly change a number of time periods in the act. The major change is that employees will be entitled to back pay for a period of only six months from the date the complaint was filed, instead of the existing two-year period. This restriction on time will penalize vulnerable workers, who often find it necessary to file a complaint only after they have severed their employment relationship, either by quitting or changing employers. This is a substantive restriction, particularly for workers who have been denied their statutory rights for a longer period of time and cannot afford a civil suit. Only in certain circumstances, such as where the breach is a continuing one or there are violations in the case of several employees, is the limitation period extended.

Workers who fail to file within the new time limit will have to take their employer to court in order to seek redress. The burden of cost will also have to be borne by the employee in such circumstances, as the Ontario legal aid plan has been scaled back and no longer covers most employment-related cases.

In contrast, the ministry still has two years from the day the complaint is filed in order to conduct their investigation, and a further two years to get the employer to pay moneys owing. In other words, an employee, having made a complaint under the act, could wait up to four years before receiving their money, and the only part of it that the collector collects, minus the user fee. That

the government can rationalize such amendments as facilitating administration and streamlining procedures is almost beyond comprehension.

Minor positive amendments: There are several positive amendments in Bill 49. Two are noted. The first concerns vacation entitlements, section 8 of the bill, section 28 of the act. The second concerns seniority and service during pregnancy and parental leave.

Entitlement to vacation pay is one of the few amendments in Bill 49 that Local 6500, USWA can support. With the inclusion of this amendment, the act will clearly provide that the vacation entitlement of two weeks per year will accrue, whether or not the employee actively worked all of this period or was absent due to illness or leave.

A distinction remains between entitlement to time off and entitlement to vacation pay. Vacation pay continues to be based on 4% of earnings over the preceding 12 months. Thus, where a leave has resulted in decreased earnings, it may still be reflected in reduced statutory entitlement to vacation pay.

The amendments to seniority and service during pregnancy and parental leave ensure that all employees are credited with benefits and seniority while on such leaves. With the passage of this amendment, the length of an employee's time on leave will be included in calculating length of employment, length of service or seniority for purposes of determining rights under the collective agreement or contract of employment.

The passage of these amendments into legislation would take precedence over contractual language whether or not the contract refers to active employment.

Conclusion: As our comments on the key amendments of Bill 49 indicate, no one concerned with maintaining basic societal standards in terms of hours of work, overtime pay, vacation pay, severance and public holidays can possibly favour these amendments. Bill 49 would eliminate the floor for minimum standards. As for the unorganized, particularly the most vulnerable in the workforce, Bill 49 is about the race to the bottom. It is about undermining their already precarious existence and as such it is totally unacceptable.

As noted in our introduction, these amendments come on the eve of a comprehensive review of the act. The proper procedure would have been to include such changes as part of such a review and not try to pass them off as housekeeping changes. But beyond this, the core of the problem is the nature of the amendments themselves. As our comments already make clear, standards shouldn't be eroded, shouldn't be made negotiable; rights shouldn't be made more difficult to obtain; and enforcement of such shouldn't be contracted out and privatized.

All this is taking place as part of the overall Harris agenda to shrink the size of government and divest itself of public services. The bottom line means slashing \$10 billion from Ontario's budget in order to pay for the tax break for the wealthy.

The Chair: Thank you. That leaves us one minute per caucus for a brief question or commentary. Mr Lalonde.

Mr Jean-Marc Lalonde (Prescott and Russell): Thank you for your presentation. As I could see with the first group, Local 6600, and yourself, there will be more

responsibility given to organized labour groups. You'll be left with more responsibility. Do you think this could result in increasing union fees for union members?

Mr Tooley: I would hazard to guess that if we have to provide some of the government services that have been available in the past, it would be a possibility that we would have to recover more from our members, yes.

Mr Lalonde: It's too bad that your brief is so long, but very interesting. We could take more time to ask you questions. But probably the government preferred this way, having the least number of questions.

The Chair: The questions will move to the third party.

Mr David Christopherson (Hamilton Centre): Thank you very much for your presentation. I only have a minute but I do want to say at the outset that all the presenters today should remember that we're only having these hearings because the government was brought out into the public light kicking and screaming. They didn't want to pass this and include public comment while doing it. They wanted to ram it through by the end of June. The clause about the flexible standards that you are concerned about indeed has been deferred to the broader review. That's again because we forced them out into the public. That would have been law as we sit here now, had we not forced them to come out.

You are questioning that it may possibly be part of a future review. The minister has made it very clear: It is on the table. It's right that you raise that now and we make sure that everyone understands how much will be lost in terms of minimum standards in this province if that's allowed to remain. I want to thank you and your members for your ongoing struggle, not just on behalf of your own members but especially those who don't have benefit of a union like yours and need you to speak out for them.

Mr Ted Chadleigh (Halton North): I was interested in your brief. Thank you very much. You mentioned education and people not understanding their rights under the act and the employees, particularly those who are most vulnerable and quite often those who are not represented by unions, who are abused or taken advantage of by employers.

Over the course of the hearings, it seems that there's a large number of employers who don't understand their duties under the Employment Standards Act, and as well a number of employees. Do you have any suggestions as to how we could improve the education of both employers and employees in these areas?

1100

Mr Tooley: One of the areas we've seen is that the Ontario Federation of Labour has opened up a hotline for workers to report bad bosses. We think that bosses in the province of Ontario are getting the message from the government of the day that it's open for business; it's open to take whatever we can. The race to the bottom is on the way, and we see that workers who are the most vulnerable, as you've said, are going to be affected.

We are greatly concerned about people who don't know their rights — they're at the mercy of employers who should have some integrity — that those people are going to be hard done by over the long haul with the kind of legislation that's proposed.

Mr John R. Baird (Nepean): On a point of order, Mr Chair: I understand from the clerk that the next group is not here yet. Given that we've travelled all the way to Sudbury and are most keen to have a dialogue, if Mr Lalonde has any further questions he'd like to ask, we'd be pleased to give unanimous consent to extend this a few minutes per caucus until the next group arrives.

The Chair: Is a representative of the IUOE, Local 793, in attendance? I suggest then that we give another 10 minutes, on the assumption that they're late in arriving, divided equally between the three caucuses.

Mr Bert Johnson (Perth): Maybe you could just ask the presenter if it's all right with him.

The Chair: That's a very good point, Mr Johnson. Would you mind staying for an extra 10 minutes?

Mr Tooley: I certainly have no problem with it.

The Chair: Thank you, sir. We'll give another three and a bit minutes to each caucus, commencing again with the official opposition.

Mr Pat Hoy (Essex-Kent): We appreciate your staying here a little longer. No doubt you have other commitments today. Your presentation and the one prior pointed out a very diverse membership in your union. Specifically, I'm curious about the service industry in the non-organized area, although you do represent a great many people in those areas.

How do you feel this is going to impact on those who are, as we've said this morning, more vulnerable, unorganized as it relates to the route they have to take to acquire moneys over the \$10,000 limit? We know that 96% of claims are under \$10,000, and it was suggested that those in executive positions and higher wage areas claim over that. But what about those people in the service industry? How does this impact on them as they try to acquire moneys over \$10,000?

Mr Tooley: I believe that most of those people or a lot of them, not even being familiar with the labour laws and the Employment Standards Act, are really going to be at a disadvantage because they have no one to speak on their behalf, no one to guide them through. I think that a lot of those people are simply going to give up or they will go by the two-week time limit that's proposed in the changes to the act. They will simply miss the boat and those wages in most cases will never be recovered.

Mr Hoy: Are you aware that one cannot sign away their rights? For instance, if there were a statute that said certain health and safety regulations had to apply and some employer or owner came along and said, "Would you sign this and waive those rights?" that attempt to sign away rights and circumvent a certain statute could not be upheld in court.

Mr Tooley: As we see the proposed changes to the act, when an employer comes to an agreement with his employees, those changes could very well be circumvented and could be agreed on. Especially in a non-unionized workplace, if the workers agree, they're very vulnerable because the employer has the upper hand and their very livelihood depends on agreeing with whatever the employer wants to do. I think there would be cases where that would definitely happen, that those particular companies that really are very unscrupulous in some cases would try to circumvent the law.

Mr Christopherson: I want to pursue the issue I commented on earlier that you focused on in your brief with regard to contracting out of minimum standards. The government seems to be of a mind that there's absolutely nothing bad that could happen to any worker if the union has agreed to a collective agreement that contains lower standards.

First you've already pointed out that any employers who table those with a major union like yours are looking for very serious trouble and they're going to find it, but the fact of the matter is that even your union would have to deal with the give and take of negotiations. Suddenly there would be demands on the table from the employer that otherwise wouldn't even be there, they wouldn't be part of the equation. Certainly for smaller unions or isolated local unions, the fact that they enter into a round of concessionary bargaining where maybe the part of the economy they're in is in trouble — now the legalized right to use scabs, perhaps the threat of closure or moving the operation somewhere else — we know that sometimes there are concessions made in collective agreements, and in this case we could see collective agreements that contain clauses that have standards below the floor that now exists in what is commonly called the workers' bill of rights.

That's what we've heard all across the province. Certainly that was my sense of this in my own experience in bargaining. Could you maybe expand on that in terms of how you would see that affecting the Sudbury area negotiations and contracts that you're familiar with?

Mr Tooley: One problem I see that would create a lot of animosity at the bargaining table is that if there were certain standards the employer wanted to put in that were below what would be acceptable, it would give us cause to be out on strike probably for a long time for something that we've already had and enjoyed in the past. It would certainly cause a lot of hardship needlessly, because the floor should not be lifted.

It's there, it's been there for a long time and I don't think the changes are going to help anything in this, particularly workers, whether they have a collective agreement or not.

Mr Christopherson: The cost of arbitrating now, under the Employment Standards Act, will be your responsibility. In your experience, what's the range of costs for an arbitration case for your union?

Mr Tooley: An average, one-day arbitration case for our union probably runs around \$8,000.

Mr Christopherson: Some of them go on much longer than one day?

Mr Tooley: Yes. In many cases they're much longer than that, but that's just for a one-day arbitration.

Mr Christopherson: That's now a cost that your membership is going to have bear. One way of looking at it is that they now have a user fee to pay for a service and a right that was once there in law.

Mr Tooley: That's correct.

Mr Baird: Thank you very much for your presentation. I have just one comment to make with respect to section 3 of the bill, which was discussed as being the package of allowing some flexible standards in terms of the Employment Standards Act. I think there were five

areas contained in section 3, and the feeling was that to put it forward to the full review that I guess will gather steam and get under way in the fall, that would still require, though, as a package to be at least better than the minimum standard.

We heard, for example, from I believe a CUPE local yesterday. The issue was time off in lieu of overtime. We found some employment standards officers, even if union and management had mutually agreed on a provision — in some cases it would be against the law and they wouldn't be allowed to do something like that. I guess that was the flexibility we were seeking and would always have required unanimous consent among both workplace parties themselves.

Minister Witmer had listened to representatives both from the business community and the labour community and put that over to the full review so there could be a more thorough discussion of it, and we look forward to that this fall. I know my colleague Mr Barrett had some questions.

Mr Toby Barrett (Norfolk): Mr Tooley, I welcome the opportunity for some questions. Your brief is important. Steelworkers and the steel industry are very significant in my riding, as opposed to the nickel industry.

You mentioned that the United Steelworkers of America, Local 6500, oppose the bill as a whole. During these hearings across northern Ontario we've heard about an Employment Standards Act that became law in 1974 and has undergone numerous reforms by numerous authors and we've ended up with a bit of a jumble. There's been a patchwork created. We're told it's inflexible, it's unwieldy; I feel it's outdated.

You oppose this bill, and I'm just wondering: Your membership is looking at the legislation that exists now. What would you be in favour of, given that things have changed over the years since 1974? What are some positives that we should be trying to work into this bill as our committee input?

Mr Tooley: We'd certainly be in favour of having the anti-scab legislation returned. That has been very detrimental to workers, unions and companies. It's really taken away the ability to bargain in good faith. When we as a union negotiate collective agreements, we don't negotiate agreements that the employer can't live with that are going to put the employer out of business. I think the anti-scab legislation has simply put all the cards back where workers will be forced out.

Instead of having harmonious labour relations in the province it's going to create greater hardship for both employers and employees. There's no real incentive to bargain in good faith when the employer has the ability to have replacement workers come in. I think the experience has been that for every \$20-an-hour job out there, there's a worker willing to take that for \$18 and another one willing to take that for \$14 and all the way right down the scale.

I think the proposed legislation and the changes to the Employment Standards Act are going to go a long way to create that race to the bottom. We certainly believe it's not in the best interests of the province, workers and the economy to have everybody working for minimum wage.

Mr Barrett: Some of those points are probably beyond the capacity of the Employment Standards Act, but I appreciate the input.

The Chair: That takes us beyond our 10 minutes. In the absence of the next presenter, and the clerk has just confirmed that the IUOE will not be appearing here this morning, the committee will take a short recess till 11:30, when the next presenter is scheduled to appear.

The committee recessed from 1113 to 1129.

SUDBURY AND DISTRICT CHAMBER OF COMMERCE

The Chair: I call the meeting back in order. Our next presenters are in attendance, the Sudbury and District Chamber of Commerce. Good morning and welcome to the committee. Just a reminder that we have 30 minutes for you to divide as you see fit between either presentation time or question-and-answer period.

Mr Bernie Freelandt: Thanks very much. I won't take 30 minutes and I hopefully won't answer a whole bunch of questions. The thrust of our presentation today is to endorse the amendments. We will speak to it in a general way.

Mr Chair, ladies and gentlemen of the committee, my name is Bernie Freelandt. I am president of the Sudbury and District Chamber of Commerce. On behalf of approximately 1,000 business representatives, I wish to extend our appreciation to you for allowing me to take this opportunity to present this morning.

The Sudbury and District Chamber of Commerce is one of the largest and most dynamic chambers in northern Ontario, and we've taken a keen interest in representing the views and interests of our membership. Our members are drawn from all areas of the Sudbury region and are engaged in every sector of the economy, from multinationals to the independent owner-operator, thousands of employees to one employee. However, 70% of our members are on the lower end of the scale and don't have a lot of management depth and administrative ability, and that's the largest group we represent here today. We represent the interests of business in this community and we're recognized as the voice of business in this community.

Rather than addressing all of the proposed amendments to the bill, we have chosen to limit our comments to three specific areas: the reduced role of government, collective agreement enforcement, and the flexibility that this new act provides.

The changing role of government is necessary given the climate and the changes in business today. Times are changing and everything that we do has to be reviewed and looked at again. In that frame, in general terms, we applaud the government's action to reduce its role in the administration and enforcement of the act. Simplifying and easing the administrative burdens of compliance, lowering costs and reducing access barriers will create opportunities for improved communications and provide for resource efficiencies, all of which are viewed positively by the business community. We need to avoid duplication and reduce time frames, and we believe these amendments go to that end.

The other area is the duplication through the act and the collective agreements where those exist. The Sudbury chamber supports that where a collective agreement exists, enforcement of the act must be through the grievance and arbitration procedure of the collective agreement rather than through the employment standards branch. We believe this action will force opposing sides to face the issues before them, placing greater responsibility on the parties to reach their own settlement rather than devolving that responsibility to government-appointed adjudicators. Forcing communication and forcing people to talk and resolve their problems is far more efficient than relying on some third party to deal on their behalf.

As government bureaucracies continue to decrease in size, an increasing responsibility will be placed on employers and employees to improve their communications and resolve their disputes, and we believe the amendments will go to that end.

Flexibility is something that is absolutely necessary in our changing world, not just in Sudbury. Everybody tells us we're part of the world economy and global economy. We believe that to be important, and as a consequence, employers and employees must be more flexible. We at the Sudbury chamber endorse the flexibility provided in the amendments to the act where parties can agree to standards other than those imposed as minimums in the Employment Standards Act if they are perceived to benefit both parties. Environmental circumstances, particular business circumstances, cause different standards to be imposed, and if they can be negotiated and settled, why would those not be more important than the ones imposed by the legislation? This opportunity will encourage improved communications, again, and employers and employees will benefit from the increased flexibility.

In conclusion, we congratulate and applaud the government for taking action that supports greater efficiency, flexibility and self-reliance. While we have selected the areas of the act we wished to address, we are hopeful that the remaining improvements not addressed also support these goals.

On behalf of the members of the Sudbury and District Chamber of Commerce, we appreciate this opportunity to make this presentation, and I will answer questions to the degree I can. Thank you very much.

The Chair: Thank you very much. That affords us just over six minutes per caucus for questioning. We'll commence with the third party.

Mr Christopherson: Thank you for your presentation. I note that you state that, and I'm quoting from your document, "This opportunity," meaning the flexibility issue, "will encourage improved communications between employers and employees, increased flexibility and possibilities." If you were here earlier, you heard from other presenters from the labour movement suggesting quite the opposite, that indeed employers tabling any amendments to collective agreements that are below the existing Employment Standards Act will increase the likelihood of strikes, make relations far more acrimonious and indeed create a less inviting environment for investment because of labour strife. How do you reconcile those two different perspectives?

Mr Freelandt: I really think times are changing and people are communicating and are forced to communicate more. The environment you're suggesting is one that we've seen in the past. I think we have to turn the page. Employers and employees will be and have to be more cognizant of changing circumstances and environments and have to communicate and discuss those issues.

I think you will have that kind of circumstance in isolated cases where people can't realize that there's a need to change. There are always people slow off the mark, and those people will lose. Employers and employees alike will not benefit if they take that attitude. I think we are in a new, changing economy and a new, changing environment. Those thoughts are the past and we have to move forward.

Mr Christopherson: I would suggest with great respect that it's not an issue of a particular union being slow off the mark. The business community and this government need to recognize that the labour movement is not about to lie down and let these kinds of minimum standards be taken away. I think it's extremely naïve on your part to believe that somehow by holding your breath and clicking your heels three times and wishing and hoping, suddenly everything's going to be wonderful.

We're hearing all across the province, from every union we've heard from, that this is going to increase the acrimony. I find it upsetting to believe the business community believes that these are somehow going to make things better. I have no doubt that that will be borne out by events to be seen in the future.

The government has contended that these are minor housekeeping changes and that indeed there is no reduction in minimum standards. Do you agree with that?

Mr Freelandt: I think that's probably the result you get from the document, because I think we started at a base, and that base is where the discussions and the negotiations start from. Even to address your earlier comment, I don't think this is going to impair minimum standards. I think it's going to bring those standards in line with the circumstance and the environment that the employer and the employee find themselves in. So it's a base to work from and it allows flexibility now to discuss beyond the act and do different things. So no, I don't think this is going to reduce the minimum standards of the act.

Mr Christopherson: I would ask you to comment, then, on the fact that employees now will have a cap of \$10,000 and a minimum threshold as yet unidentified or undesignated whereby the Ministry of Labour will no longer collect for them. They'll have to hire a lawyer, take time off work and go and fight for that money themselves. I would suggest to you that that's a loss to those workers because they're going to be out of pocket money to recoup money they're already owed and money that would ordinarily be fought for them by the ministry.

I would see it very much as if the government were suggesting to you that if someone shoplifted from one of your members' stores or deliberately did some kind of damage, you are now expected to pay for the prosecution and pay for all of the things the justice system now provides. I think you would consider that a loss. Workers are seeing this as a loss. I have a great deal of difficulty

understanding how even from a commonsense point of view one could say that workers aren't losing something here.

1140

Mr Freelandt: I think the comment on the collections is the fact that the collections aren't very effective or efficient by the government at this point anyway, so it's got to change.

Mr Christopherson: My point is that the workers are losing something here. Right now, workers have the right to have 100% of their claim, at least to have the ministry go after it. If it's over \$10,000, they won't have that right. Whatever the minimum threshold becomes, whether it's \$100 or \$500 or \$1,000 — we don't know — the ministry will not go after that money for them. They are going to have to pay out of their pocket to go after money they're already owed to pay for a process that's already provided for by the Ministry of Labour. How can you suggest that's not a loss?

Mr Freelandt: I think the amount over \$10,000, they provide for the legal system to kick in. Those amounts are larger and that's where the employee has the opportunity to secure their rights through a different process. This will allow the majority of the claims to be satisfied in a more efficient way.

Mr Christopherson: My point is though that workers have the right now to have all the money that's owed them recouped by the Ministry of Labour, and when that's not there, they've lost something. That's a right that they've lost, and when the minimum threshold kicks in, that's a right they've lost also. In fact, if the limit is at about \$200 and you are owed \$100, quite frankly, it's not very cost-effective to hire a lawyer to go and fight for \$100. Most people are going to let it go, and that means that the bad bosses — I'm not suggesting you have many of them, but they do exist — are going to have a field day ripping people off for small amounts of money that they can't in any practical way claim for, and yet right now, under the existing law, that money would be recouped by the Ministry of Labour on their behalf. That won't be there. They've lost something.

Mr Freelandt: Circumstances are changing and I think those are areas of change, and there'll be adjustments, yes.

Mr Chudleigh: Thank you very much for your presentation and for coming in today, Mr Freelandt.

In the area of knowing what the regulations are, I know when I was in the retail business back in the early 1970s, understanding what the regulations were and what the flexibilities were was something you kind of had a half understanding of but didn't really have a clear focus on. I was impressed to hear that you have 1,000 members of the chamber. What would you suggest would be the level of understanding of the Employment Standards Act today among those members? Would it be fairly good or would it be —

Mr Freelandt: I would say it would be pretty poor.

Mr Chudleigh: Is there an area where education could take place? I wonder if an awful lot of the cases that are currently or have been before the employment standards could be avoided through proper education, not only of the employers but also of the employees as to what their rights are and what they might expect.

Mr Freelandt: I think there's no question, because there are a lot of issues that come up. In my real job I deal with many different businesses on a consulting basis, and the employers are quite surprised at the things they are required to do and have no knowledge of, and that does create the conflict with the employees. So I think there are many things. Education of the duties and the requirements under the act would be very important.

I think like many things, though, there is so much that the employer has to understand and learn, not just under the Employment Standards Act but under many of the other legislative provisions, it makes it very difficult for someone who runs a business of five employees to be well versed in all of the areas, this just being one of them. So the simplification and bringing this kind of legislation to a level where the small employer can deal with it in a more meaningful way has to be embraced by the business community.

Look at the trends. The trends are away from larger employers. We've got lots of small businesses. In our chamber, over 70% of them have 10 or fewer employees. What kind of administrative depth can you have in your organization of 10 employees or fewer to deal with all of these things? Then you make a mistake and something is wrong and one of the employees is not handled correctly, it's a nightmare for both parties, no question.

The Chair: Any further questions from government members?

Mr Bert Johnson: I just wanted to know the limit on the Small Claims Court. Is that \$6,000?

Mr Freelandt: I believe it is \$6,000.

Mr Bert Johnson: So every employee who would to collect wouldn't have to go to a lawyer to collect that.

Mr Freelandt: He could go through the Small Claims Court, yes.

The Chair: If there are no other questions, we'll move to the official opposition.

Mr Hoy: Good morning. I appreciate hearing from you today, as well as everyone in the Sudbury area who will be presenting today.

You say in your brief, "As government bureaucracies continue to decrease in size, an increasing responsibility will be placed on employers and employees to improve their communications and resolve their own disputes." You just mentioned that you believe that many employees do not particularly understand all the ramifications of the Employment Standards Act and, as well, you say your membership has a great many employers that have 10 or fewer employees. Along with that, we've heard submissions that workers also do not understand the Employment Standards Act. So we have both employers and employees saying, "We really don't understand this," as events unfold, or prior to that. Don't you think there's a role for government to be that third party, to step back from the downloading that this act would do in putting the onus on employers and employees to the degree that the government wants to do?

Mr Freelandt: There's always a role for government, and I think the way I would like to see things happen in my office — I have an office where I employ 20 people — I would like us to communicate and discuss and resolve issues among ourselves rather than have

somebody impose on me or someone come in from the outside to talk to me about my problems in my business.

If I can't resolve the problem with my employee, and I am not an unfair employer, then I think that's where this legislation should come in and assist the employee in making sure that he or she is handled properly. But, boy, I'd like to go a long way before I have anybody else in my business.

I think the employee-employer relationship is always better served by working through a compromise and discussing the issue person to person. If you bring in a third party, all of a sudden the barriers go up, and even if I liked the person before, I've got a different feeling about it. If this act goes anywhere towards encouraging that kind of communication, I think that's a real positive thing. In the last resort, if it doesn't work, then yes, you have to have remedies and you have to have the government and legislation to provide assistance to the employee.

Mr Hoy: So there is a role for government, and we have to decide whether smaller government intervention is necessarily better government for all the parties, employers and employees alike. That's what the committee will, in part, deal with here.

You mentioned a different view of an employee who proceeds along and maybe doesn't have this communication that resolves the matter and then has to turn towards government for a resolution. The employees feel that they're intimidated by the opening of a claim against their employer. Many of the employees do not open a claim until after they've left the employ of the employer, so there's this great problem of dealing with the issue of opening claims in the very beginning. You've stated that your view of employees would change, and they're cognizant of that fact with those unscrupulous employers.

We've got a system now where the recovery limit is going to be six months in a claim situation. Non-unionized workers have two weeks to decide whether to work within the act or go to court. The employee is limited by an unknown minimum claim and a \$10,000 maximum claim. However, they can go to the courts after that, I agree.

Then we have a situation where a private collector may make settlements as low as 75% of those moneys owed. Then too there is an appeal process, which the government wants to extend from 15 days to 45 days, and in one submission by business it was in order to negotiate in lieu of a settlement.

The whole balance seems to be focused on the employee. The problem, admittedly by the government, has been that the enforcement of this act has not been very good; 25 cents on the dollar has been paid out over some time. But these particular parts of the act seem to have the employee always deciding as to what to do next in certain time lines and within certain monetary limits. The question comes down in the end, for me at least, to the enforcement. The enforcement has not been very good. The act deals in the main with employee decisions. Do you have any suggestion for the committee on how we could improve enforcement and, in my mind, have a little bit of onus shifted over to the employer in regard to this whole act?

Mr Freelandt: Being an employer, I need my employees. I need them to work with me. If I'm not a fair employer, my business is going to suffer. The way I think the business world is unfolding, you've got to be better all the time. This act moves me to think that with better communications I'm going to have better labour relations with my employees.

As a fallback position, where I don't do that job well, I'm going to hurt in my business and I may not be in business very long. A lot of these 10-employee-size businesses will come and go as time goes on. It will be a test of their ability to manage and go forward.

If I'm going to go forward and I don't treat my employees right and I'm still successful and I'm still in business, this act is going to allow for the employee to come back through various means, either through the act itself or through the courts. That's going to cost me time and money and grief, and I'm not going to enjoy that process in any event. In particular, I wouldn't enjoy a court process. I'm going to try to avoid that, so again I'm going to be forced to communicate.

In the end, I believe that if you don't move and we don't turn the page and start communicating and working better, particularly the smaller employers who don't have the time to fight all these battles, we're all going to lose.

I'm not sure that I can answer your question other than the fact that we are turning the page. Labour relations are better. The larger companies are talking in a different language with their unions. I know through the chamber of commerce we're having discussions with various labour representatives in Sudbury to try to do things. I believe that's going to happen in all businesses; if it doesn't, those businesses won't survive, regardless of what kinds of acts are there.

The time frames that these acts are suggesting are quite helpful. Can you imagine that I have an incident and I've got two years that I've got to worry about that incident? Six months is a long time, let alone two years. So I think that the tightening up of some of the time frames is important. It causes the employee, yes, to make a decision and go forward. You don't have forever to make that decision. By the same token, as an employer, I don't have to worry about it forever; I deal with the facts, we get on with it.

Mr Hoy: For employers like yourself, who endeavour to have a good relationship with their employees and have this open line of communication, it's very good. I believe that the large majority of the people that this chamber and other chambers represent are probably exactly the same type of businessman that you are. However, in those cases where it arises that the employer is unscrupulous, we have to design an act that protects the vulnerable and the employees who are victimized.

But I appreciate your comments, and I just want you to realize that we recognize that most of the employers are very good. It's in those cases where the law is being twisted and broken that we have to provide protection for those who are victimized.

The Chair: Thank you, Mr Freelandt, for appearing before us here today. We appreciate your presentation.

That concludes our morning session. The committee stands in recess till 2 o'clock.

The committee recessed from 1155 to 1401.

CANADIAN AUTO WORKERS, LOCAL 103

The Chair: I call the meeting back to order for our afternoon session here on our eighth day of hearings on Bill 49. Our first presenter this afternoon will be CAW Local 103. Good afternoon. Welcome to the committee. Just a reminder that we have 30 minutes for you to use as you see fit, divided between either presentation time or questions and answers.

Mr Brian Stevens: If the chair continues to be this uncomfortable, I probably won't last the 30 minutes. Do you sit in these all day?

Interjection: How would you like to sit in them all day? Aren't they awful?

Mr Stevens: This one here's not bad. Anyway, I thank you very much and I'll put the clock on myself as well. I do appreciate the liberties that you took in returning back a little late from lunch, because it provided me with an opportunity to review the bill for the first time. I went into our MPP's constituency office of late and tried to get a copy and I was unable to. Mr Harris's assistants, in fact, would only provide me with a press release, wouldn't even provide me with the fact sheets, so that's led to some difficulty in preparing my submission. Having said that, I will try my best here.

This submission is made on behalf of the 300 members of CAW Local 103. We represent workers at the Ontario Northland Transportation Commission, both on the railway, which is covered under the federal jurisdiction, and the hotel staff, which is covered under the provincial jurisdiction. We are among the 143,000 CAW members who live and work in Ontario. We welcome this opportunity to appear before this committee to address our very serious concerns about the Employment Standards Improvement Act, more commonly known as Bill 49.

On May 13, 1996, when Labour Minister Elizabeth Witmer introduced Bill 49 amendments, she claimed they were merely housekeeping changes to the Employment Standards Act. Bill 49 was described by the Ministry of Labour press release — that was the one that I had the opportunity of seeing — as “facilitating administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures.” The truth of the matter is that what have been presented as minor technical amendments contain substantive changes which will negatively impact the approximately 5.8 million working people, whether they work in multinational corporations, a unionized workplace or a small employer in Ontario.

The changes will clearly benefit employers and diminish access to justice for both organized and unorganized workers. The proposed changes will make it easier for employers to escape penalties where they violate basic standards and harder for the average working person in Ontario to enforce his or her rights.

This clearly runs counter to the true intent, meaning and purpose of the Employment Standards Act of Ontario, which is the protection of employees. The Employment Standards Act is legislation that exists to attempt to redress the enormous imbalance of power that exists between employers and employees. In fiscal year 1994-95, the Ministry of Labour received 731,289 inquiries — this is by their numbers — requesting

information or clarification with respect to the Employment Standards Act. During that same period, the number of employees assessed was about 48,050. The dollar amount involved in these assessments was more than \$64 million. This amount is employee entitlement for wages which were not paid by their employers.

Certainly there is a demonstrated role for government to level the playing field and prevent those unscrupulous employers from taking unfair advantage of workers in the province. The Employment Standards Act must and should continue to institute uniform, fair and reasonable minimum standards to protect the interests of workers. That is what workers are calling for, not the amendments contained in Bill 49.

So what's wrong with Bill 49?

Although Labour Minister Witmer has recently announced that she will postpone the flexible standards issue until this fall, when the government plans a complete review of the law, this issue remains a large part of this government's agenda.

The proposals contain fundamental changes to the Ontario labour law by permitting workplace parties to contract out important minimum standards and allow management to table bargaining demands that are below the current standards for hours of work, overtime pay, vacation and severance pay. This would be legal if the contract “confers greater rights...when those are assessed together.” Apart from the incredible logistical problem of trying to measure monetary against non-monetary items, these minimum standards, by MOL figures again, represent nearly 40% of the contravention by employers in terms of dollar amounts. Therefore, the proposed changes of Bill 49, rather than emphasizing enforcement of the act to protect the employee's entitlement in areas that employers violate the most, will support the offenders in the areas that employees are most vulnerable.

It is not sufficient to say that these proposals will form part of a complete review of the law. The minister should have the courage to withdraw these amendments completely and reinforce this cornerstone of the Employment Standards Act, where workers have the benefit of a complete and coherent set of workplace standards governing each important aspect of their working conditions.

Bill 49 will require unionized employees covered by a collective agreement to use their grievance procedure to enforce their rights under the statute. This amendment is an attack upon what should have been seen as a universal right of action for all workers in Ontario. The Employment Standards Act has traditionally been seen by past governments of all political stripes as a constitutional document of the workplace. It has been crafted by previous governments to provide for universal rights for all workers in the province. Past legislatures have intended that all workers enjoy the benefits of not just the guarantees enunciated in the Employment Standards Act, but also the enforcement mechanisms pertaining to these guarantees, which are the key to the operation of the Employment Standards Act.

This government is proposing to diminish the status of the Employment Standards Act and the public support of employment standards enforcement procedures by cutting off over a third of Ontario's workforce from the benefit

of such enforcement procedures. Unionized workers deserve the benefit of the basic administrative and enforcement procedures of the Employment Standards Act as much as any other group or category of workers. The investigation and administrative powers of the employment standards officer have been crucial in seeing that justice is done for our members.

In addition to the investigative and enforcement concerns raised here, the union can also face potential claims against itself by its members. While this already occurs now, this will be dramatically increased with the union faced with complaints concerning fair representation by adding the enforcement of the Employment Standards Act into the grievance procedure. How will the small local unions cope with the offloading of the enforcement of the Employment Standards Act? If this government and the business community are claiming that small business will be the driving force in reviving the economy, this also means that our workplaces will be made up of smaller local unions with minimal resources. Will they be given the power to conduct investigations? Will they be given the power to demand records and documents? Will the employer be responsible for the arbitration costs? We can't see how this proposal will retain the consistency of decisions rendered by the employment standards officers. We fear this will lead to the erosion of the minimum employment standards with no avenue of appeal. Bill 49 does not preserve the appeal procedure which is currently available to both employers and employees.

1410

Bill 49 provides that if a worker wishes to make a claim and use the enforcement mechanisms of the Employment Standards Act, the worker may claim only up to \$10,000 as a consequence of the employer's violation, not one dollar more. This limit will oblige workers to go to civil court if they wish to make a claim in excess of \$10,000.

Firstly, the cap makes no sense and will lead to pressures from employers to ratchet down the ceiling in the future to get out from under the Employment Standards Act. The ministry's reasoning, as noted in the Expenditure Reduction Strategy Report dated 1996-98, is to lower the caseload as higher-paid employees use civil action to collect. The assumption must be that when an employee files a claim in excess of \$10,000, they are a higher-paid employee and can well afford civil action. Well, that's certainly not the case.

Let's take for example a 12-year employee employed at a manufacturing plant business and earning about \$33,800 a year. That's \$650 a week. They're laid off without notice due to downsizing. The employee is entitled to eight weeks' termination pay in lieu of notice and 12 weeks' severance pay, for a total of 20 weeks. That amounts to about \$13,000. Now you are over your \$10,000 ceiling. If the employer fails to pay the moneys owed, the employee is now forced to choose between filing a claim with the ministry for \$10,000, which results in forfeiting \$3,000, or pursuing action through the courts. Civil litigation is both costly and time-consuming, and most lawyers will request a \$2,500 retainer, which will probably only get you through the pleadings; it won't

even get you into court. The original \$13,000 that you had coming to you quickly disappears with this proposal.

What's the incentive for employers to settle up claims before they reach the \$10,000 cap? I don't see any. Knowing that civil litigation is more costly, more time-consuming and more complicated for employees than the statutory treatment of an Employment Standards Act claim, some employers will be more apt to get over the \$10,000 and force court action.

Only one province in Canada, and that's PEI, has a monetary cap imposed on employee claims, and it is shameful to see this province take such a backward step by denying fairness and justice to such basic worker rights. This clearly is a windfall for employers either way and it should be removed from Bill 49.

Bill 49 also permits the Minister of Labour to proclaim by way of regulation a minimum monetary limit on claims a worker may file. Workers will be obliged to go to Small Claims Court to pursue a claim which falls below the minimum limit. Since the tax dollars of the people of Ontario fund the Small Claims Court system in this province, just as tax dollars fund the operations of the Ministry of Labour, and since the civil court system is more costly and cumbersome than the current ministry system of enforcement, it is impossible to see what savings this government anticipates obtaining by making this regressive move.

Could it be that the government is counting on the intimidation factor of Small Claims Court to convince employees to give up the money they are owed? This will be especially true if the employee is still working for the offending employer. Each time an employee does not pursue a violation of the Employment Standards Act as a result of this provision, the government is facilitating a direct and illegal subsidy to the employer's bottom line.

Bill 49 reduces the time during which a worker may bring a claim to recover money. Under the current act, employees have up to two years to file a complaint for any moneys owing from their employer. Under this bill, employees will now have six months from the date of the complaint. Very few employees file a complaint while still employed, with the exception of pregnancy and parental leave complaints, and that's for obvious reasons: termination of employment or other repercussions.

The Ministry of Labour again stated in the Expenditure Reduction Strategy Report that by reducing the time frame to file a complaint, this would improve the turnaround time on investigating claims. What the ministry should be doing is reversing the downsizing currently going on in the employment standards program and hiring more staff to prepare and file orders to pay. The two-year limit is a must for employees. Most workers will wait until they have moved on to new employment before they pursue violations of the law against their former employer.

Considering that Bill 49 continues to allow the Ministry of Labour up to two years from the time a worker filed a complaint to initiate a proceeding to recover the money owed and an additional two years to attempt to collect the money owed, it's evident that the passage of time associated with the prosecution of a claim is really not a concern with this government.

This amendment leads one to the simple conclusion that the government wants to protect those persons who currently enjoy considerable wealth and power against individual, vulnerable and disadvantaged workers in Ontario by substantially foreclosing on their ability to pursue employers.

Bill 49 proposes that the collection of outstanding orders to pay wages against employers should be turned over to private collection agencies. While we acknowledge that there is a serious failure of the ministry to collect outstanding wages, we suggest one reason, among several, is a lack of resources provided to the Ministry of Labour to do the job that needs to be done.

This committee should know that the employment standards branch did have its own collection unit for a short period of time. The collection unit had been formalized about 1990 and was disbanded in March 1993. The history of collections, as supplied by the OML, are as follows:

In 1987 to 1990, of course employment standards officers act as collectors, and 1990 was the first year that the collection unit came into force. You see a dramatic increase in collections. While these numbers show a successful trend, the collection unit was disbanded.

The first quarter of collections in 1993 was \$901,000, which, when projected for a full year, may have realized a collection of more than \$3.6 million. The ideal solution regarding the collection function of the employment standards is to reinstitute the collection unit. This would result in a more efficient and expeditious finalization to a claim. The argument in favour of an internal collection unit far outweighs any other proposal. These important legal powers to settle minimum standard claims should never rest in private hands.

Under the current act, an employment standards officer can make a compromise settlement to a claim when both parties agree to the compromise. Bill 49 would allow a private collection agency to settle a debt for less than 100 cents on the dollar if the worker agrees in writing to the settlement. The proposed changes will allow a private collector to apportion a lesser amount of money between the employee, the ministry and the private collector. The proposed changes will allow a private collector, driven by the desire to get their percentage, to coerce the parties into a compromise settlement. These amendments simply ask employees to constantly waive their rights.

We are already dealing with the minimum standard. Why would the government be encouraging employees to waive their legal right to minimum workplace standards? The minimum standards now become the starting point from which to begin to barter a settlement. If the act provides that the employment standards is a minimum only, would allowing less money to be collected not be a violation of the act? Are employees now expected to accept less than the full legal entitlement, that is, the minimum entitlement? Government has a responsibility to enforce its own laws, and no one should profit out of the unconscionable behaviour of employers who violate minimum standards and then refuse to satisfy outstanding orders to pay.

So what must be done? Nothing in Bill 49 addresses the issue of how to encourage employers' compliance

with the Employment Standards Act and to prevent violations of the law. There appears to be no concern with maintaining basic societal standards in terms of hours of work, overtime pay, vacation pay, severance pay and public holidays. This bill would eliminate the floor for minimum standards for 5.8 million workers in Ontario.

Steps should be taken to prevent violations of the Employment Standards Act. The public, employees and employers should be educated about the requirements of the act. In British Columbia, for instance, there is a statutory requirement that the Employment Standards Commission provide public education, and that should be adopted here in Ontario. There should be a legislative provision requiring that a summary of the basic standards in the Employment Standards Act be posted in each workplace. This is the current situation with the Occupational Health and Safety Act, and it should be adopted here.

The ministry should accept third-party complaints of violations of the Employment Standards Act. Employees fear reprisals for making claims and should be protected by preserving anonymity. Third-party complaints which establish a prima facie case of violation by the employer should trigger an audit.

The ministry should initiate a much more aggressive policy of prosecuting employers and directors who violate legislation. Currently, prosecutions for violations are exceedingly rare, and therefore there is little to deter an employer or director from either violating the act or refusing to pay an order.

Prosecutions against employers who fire workers who lodge claims under the Employment Standards Act should be pursued. Although the legislation provides for the reinstatement of employees who have been fired by employers for making a claim, without union representation, reinstatement is simply ineffective. In order to deter employers from retaliating against employees, there needs to be a substantial financial penalty imposed upon such employers.

1420

As stated earlier the two years for initiating a complaint must remain, but the time limits for initiating an investigation, proceedings and prosecutions under the act need to be tightened. Allowing up to four years to recover wages owed to an employee is simply unacceptable.

The collection unit which was disbanded in 1993 should be reinstated and the Minister of Labour should establish an escalating schedule of administrative charges tied to the length of time and complexity of procedures needed to recover the money owed to employees. Employers who violate the legislation should pay the cost of collecting money owed to employees. This can be done without turning the function over to a private collection agency, which is not directly accountable to public policy.

Ultimately, these amendments come on the eve of a comprehensive review of the act. The proper procedure would have been to include such changes proposed here as part of such a review, and not try to pass them off as "housekeeping" changes. But beyond this, the core of the

problem is the nature of the amendments themselves. Employment standards should not be eroded. They should not be made negotiable. It should not be more difficult to obtain and enforce employee rights, and they should not be contracted out or privatized.

With that, I thank you for your time. I believe I have about 13 minutes left. I'd be willing to answer questions.

The Acting Chair (Mr Ted Chudleigh): Thank you, Mr Stevens. I think we have about 10 minutes. We'll have perhaps three-minute rounds of questions. We'll be starting with the government party.

Mr Baird: Thank you very much for your presentation today. We appreciate it.

Just a quick question to start things off: You mentioned that you were looking for copies of the bill and had trouble getting it.

Mr Stevens: Yes.

Mr Baird: When did you make a request to appear before the committee?

Mr Stevens: I made a request to appear before the committee three, four weeks ago, a month ago; the day it first came out, yes.

Mr Baird: You phoned your MPP's office and couldn't get a copy?

Mr Stevens: Yes, I did.

Mr Baird: Could I ask who your MPP is?

Mr Stevens: Mike Harris.

Mr Baird: Mike Harris. Okay, my apologies. The bills are very accessible. We've heard from, I think, 15 CAW locals thus far and haven't had a problem.

Mr Stevens: I was in the office again today to try to get a copy, because it was hinted that there could be changes as well as to methods of payment. It was just unconscionable that the government would be thinking about forcing parties — so, anyway, I wanted to get a copy of the act. I went into the office in fact today and the assistant in the office would only give me part of the media kit, but would not provide me with the fax sheets; only gave me the press release.

Mr Baird: I could tell you I don't know any single member of provincial Parliament of any party that maintains copies of every single bill in their constituency office.

Mr Christopherson: PA embarrasses Premier.

Mr Baird: We just simply wouldn't have the opportunity to have copies. I don't have copies of Bill 49 in my constituency office.

You mentioned in your argument that the previous government had disbanded the collections branch.

Mr Stevens: Yes.

Mr Baird: They had discharged 10 employees and they just threw those responsibilities on to employment standards officers. We know from the figures, though, that in 1993, the last year they had the collections branch, they were collecting 25 cents on the dollar. I'm embarrassed and not pleased to report to you today that we're still only collecting 25 cents on the dollar. So I guess we know from the NDP's move, when you discharged public servants from undertaking that responsibility, it had no effect. We're still collecting as abysmal a record of earnings as we did when we had 10 more people specifically doing this charge.

I think that puts it on to our shoulders to come up with a clear and specific suggestion to do a better job, because we're not satisfied with the way it currently is, and that is the provisions for bringing collection agencies in, people with a tremendous amount of experience at collecting moneys. Of course, what I call the deadbeat companies would be responsible for collecting those funds. So that's one provision.

I wanted to also note, we do accept anonymous complaints at the ministry. Again, we'd welcome any specific proposals that you could give us to strengthen anti-reprisal measures. That's obviously a very serious offence. I know in Bill 7, our changes to the Ontario Labour Relations Act, we made that the only exception, that the Ontario Labour Relations Board could grant automatic certification to a trade union if, for example, someone was organizing a union and they were fired. So that's obviously very serious for us and we would welcome any ideas you have.

In addition — just one last point — you mentioned posting the basic standards of the Employment Standards Act in each workplace. We've heard that in a number of cases and I think it's certainly worth considering, but again, if we have an employer who is only paying someone \$3 an hour, I think they're unlikely to post something saying, "We're supposed to pay you \$6.85." If there are any other suggestions you have, we'd certainly welcome them.

Mr Hoy: Thank you for your presentation this afternoon. We agree with you when you say that the proper procedure would have been to include these changes proposed under this act with the review that will be going on later. We agree that all aspects of employment standards should be discussed all at once so that we can see the true agenda the government has.

You mentioned enforcement quite a bit and the parliamentary assistant was talking about that as well. You have clearly demonstrated here with your figures that more persons working for the employment standards branch as part of the collection unit, I believe you said, was the best response to collecting moneys for workers. Do you think the collection unit alone will suffice or are you interested in going to a financial penalty on employers as well?

Mr Stevens: I indicated that employers who violate the act should also be responsible for costs for administering the act. I did make a suggestion that perhaps there should be an escalating scale based on the efforts of the officer to resolve the issue and that be imposed against the employer.

Mr Hoy: So you're looking for a mix of both: more collection officers and financial penalties to the employer.

Mr Stevens: Absolutely. There should also be more employment standards officers back in the field.

Mr Hoy: You mentioned the British Columbia experience with public education. Could you tell me what they do there? Do you know specifically what avenues they take to inform both employers and employees?

Mr Stevens: I don't know the specifics, I just know that my colleagues who work at BC Rail, who have come out of provincial jurisdiction, tell me that's the obligation and that they do conduct public sessions on the rights of

workers and employers under the Employment Standards Act. Specifically I can't provide you with the details at this moment, but I could forward that to you.

Mr Hoy: Clearly this seems to be an area of great concern. We've had employers or employer representatives say that they don't believe every employer understands their obligations and may honestly just be making errors they're not aware of. As well, we've heard many submissions where employees do not understand their rights. This is particularly disturbing, from my point of view, for the unorganized worker, and the province has a great many in that category, notwithstanding the fact that union employees don't always understand their rights either and then have to go seeking that out. I appreciate your comments.

Mr Stevens: Absolutely. Just a little further on that, having a minimum floor certainly makes negotiating a first collective agreement much easier in the province. If there is some misunderstanding on what the legislation provides, an employment standards officer is readily available, just simply a phone call away, to say: "This is what this provision means. In terms of hours of work, this is exactly what it means." So in terms of trying to create or construct your first collective agreement, the services of the employment standards branch, while you wouldn't think they play much of a role, they do play a very significant role in establishing what the platform is that organized workers can begin to build upon.

Mr Christopherson: Thank you very much for your presentation. I think it's interesting to note that when the minister's parliamentary assistant says that posting the rights and obligations in a public place in the workplace wouldn't make a lot of sense to an employer who is violating the rules anyway, if you had enough employment standards officers going out doing surprise audits, walking through, that's the sort of thing they would pick up on just a casual walk-through, that it's not being done.

The reality is that Bill 49 is directly relating to the layoff of 45 employment standards officers, so the reason they say they can't do it is made that much worse by the fact that this bill allows them to lay off that many people. That's what this is all about: getting rid of employment standards officers, pushing the responsibility on to the employees through the court system, privatizing part of the operation and pushing the rest of it on to the unions to represent the members. All that allows them to lay off employees, which is their desire, to gut the Ministry of Labour.

1430

I want to focus on the issue of the monetary regulation they're bringing in to give themselves the ability to regulate a minimum threshold that an employee has to cross before they can make a claim. We've heard some presenters characterize them as nuisance claims. I'd like to know how you feel about putting that measure in place; and specifically, how do you feel about the fact that they're keeping secret what the minimum amount is going to be?

Mr Stevens: I understand there's a consideration of somewhere around \$100.

Mr Christopherson: We don't know that for sure.

Mr Stevens: We don't know that for sure; I agree with that.

I represent some workers who handle cash, working in the hotel business. This provision, if it is \$100, would actually allow the employer to deduct \$50, \$60 off their paycheque, and there would be no recourse other than the grievance procedure. But even if it was an unorganized workplace, for those who work in a hotel or restaurant they could deduct shortages right off their paycheques which is currently a violation of the act, and it would actually be legal.

Mr Christopherson: Legalizing it.

Mr Stevens: Legalizing the employer's theft of employees' hard-earned money.

Mr Christopherson: Absolutely. Particularly when you link it to the fact that they can only go back six months. We are talking about the bottom feeders of employers. We're hopefully not talking about the majority; we're talking about the worst of the worst. So not only can you deduct an amount that's underneath the threshold, but you can schedule it so you do it once every six months, and it just becomes another way of making a profit off the employee who is being ripped off by that employer. Presenters come forward, and this government continues to maintain that this bill in no way takes away any rights from employees at all, that workers aren't losing on this. I ask you specifically how you respond to people coming forward and the government's contention that this doesn't take away any rights from working people, unionized or non-unionized.

Mr Stevens: Clearly, whoever believes in that message hasn't spent much time in a workplace in Ontario. Whether you're organized or unorganized, the changes to the Employment Standards Act will severely impact all of us in establishing minimum standards, pushing things up, privatizing, forcing court actions. We don't really believe the role of the Employment Standards Act is to force court actions to get moneys owed to workers in the province.

Mr Christopherson: Absolutely.

The Acting Chair: Thank you very much, Mr Stevens. We appreciate your participation and that of CAW Local 103 in the hearings today.

SUDBURY AREA TAXI OWNERS ASSOCIATION

The Acting Chair: We now welcome the Sudbury Area Taxi Owners Association, Kenneth Flinn. Welcome to the resources development committee. We have 30 minutes to spend together. You can start by making a presentation and we'll use up any remaining time with questions.

Mr Kenneth Flinn: I am representing the local taxi association on what is a very large issue for us which has never been properly addressed. Unfortunately I've not looked at the pending bill. The thrust of my presentation basically is to ask for a recognition of the independent contractor status of the taxi driver. Over the years there's never been a definition, and our business has traditionally been on a contract basis. I'll just read from my notes here.

Within the taxi industry we do not have a consistent definition or notion of an independent contractor or taxi driver in regard to the Employment Standards Act.

Taxi operators in Sudbury, as specified in city bylaws, are required to be open 24 hours a day, seven days a week to provide service — this is from the bylaws of the city of Sudbury — and we have to maintain and provide that service.

In our realm or dealing with our operators we exercise little or no control. They pretty much are free, as contractors, to drive for any taxi company they wish and whether or not they're going to work; sometimes they're in and sometimes they're not. When their shift starts, when their shift ends, what they do in between — we have no control. We don't watch them. We don't sit in the back seat of the car 24 hours a day, seven days a week. What he works, where he works, what he wears, the routes to follow for fares, where he goes, how he takes fares, while he's waiting for fares, where he sits — we don't have any control. We assume he is motivated by the economics of the situation, so he'll position himself for another fare. The driver is required under Revenue Canada to collect the GST, remit it and keep records accordingly.

I have a little package that I gave to everybody. Within that we have a contract where we deal with the driver and we state specifically that he's not an employee, that we do not have an employer-employee relationship and that he is an independent contractor. We recognize that he's required to pay the GST, PST, Revenue Canada, any other applicable taxes, and we have this in place with our driver at the very beginning.

The contract imposes no obligation whatsoever. Basically we have no work schedule and we do not provide direction to the driver. By and large, again it's economically based by virtue of the dispatch function, and the driver basically is renting the car from ourselves.

The contractor-driver determines when and where he's going to drive based a lot of times on weather conditions — if it's raining out or there's a big snowstorm they're going to be in; the day of the week — sometimes they just don't want to come in on Sundays because there's not enough business; and the number of vehicles that are on the road. Let's face it, New Year's Eve is a good night to be out there driving a taxi and on a Sunday night in the middle of the summer it's probably not. Drivers pick and choose the times they want to come in.

Basically we're the community operators. As operators we abide by the bylaws of the city of Sudbury. Effectively we're not controlling the drivers, although there are bylaws, and again there's an addendum. You have a copy within your package for the city of Sudbury bylaws that affect taxi drivers. We in effect enforce them because of our licensing arrangements with the city.

Within that package — there is some legislation happening in the United States where there is a recognition of this particular industry and also of the contractual status of the drivers so that they are recognized as an independent contractor. Under the Labour Standards Act currently they are deemed to be employees and there's an exclusion for overtime and for hours of work. Statutory holidays do not apply to taxi drivers.

In other words, there has been a recognition of some situations inherent within our business, but as we don't record hours and where they go or what they do, I'd say

we are still taken to task by the Ministry of Labour in terms of vacation pay, minimum wage and termination pay.

This creates a lot of issues within our industry that there are other jurisdictions within the scope. We're dealing with Revenue Canada. In our case we have letters in there; we've gone to Revenue Canada. They've looked at the way we conduct our business, they've looked at the relationship we have with our drivers and they've said that basically we're on an independent contractor basis. It's the same with WCB. They have a test, as does the Ministry of Finance employer's health tax. They basically have their test as such and have applied it to our organization and have come away with the value that we have an independent contractual arrangement with our people. But the Ministry of Labour does not have that test, nor do they have any application where we can be deemed to be an independent contractor.

The thrust of my presentation is to ask for some recognition of contractor status within the taxi industry, because right now it's just like that pitcher of water that's half filled or it's half empty: Whoever wants to see it any way they want, any time they want, that's the way it is. It's a difficult business if we can't have some definitiveness in it.

1440

Mr Hoy: This is somewhat of a different presentation than I've heard in the last number of days. You say that you're governed by city bylaws. My expectation with the downloading that is involved in Bill 49, as we look at it, is that the government probably likes that idea and would like to let others decide what's best or not in their favour.

The driver rents the car from someone, and the benefit to the driver is the opportunity to make money through fares. The other parties involved — for instance, you're an owner-operator, not a driver, so you provide the car, the insurance and all other matters like licences on the vehicle and a licence within the Sudbury region.

Mr Flinn: That's correct.

Mr Hoy: You also describe that vacation time and termination pay are a problem under this kind of arrangement or it's difficult to know what is adequate. I guess that's part of your pitcher of water. But within that you have this arrangement where the driver chooses when to work and how long. Isn't it possible that he could take two weeks off?

Mr Flinn: Absolutely. He does.

Mr Hoy: He does or —

Mr Flinn: Most of them do. They take time off and they may not show up on Mondays or they may not show up on Tuesdays. Sometimes they don't show up for two weeks. Within the spectrum of the labour force we have different levels. I have to work in this particular area and field, which is by nature a transient type of business, although we are seeing a real change now with the lack of jobs out there.

We are now starting to find people coming to us who want to be professionals. It's becoming a profession now. It's the change in the economy. We have people who are highly educated coming to us now and looking to drive a taxi. They fill in; they have a job here and they drive a taxi on the side. The appeal for them is that by and

large a lot of it is cash business and they get paid daily. We have a contract with them and we pay on a daily basis, so each day they are paid and that's basically how we deal with it. So we don't withhold.

They're renting the car from us. They come in, they pay us for the rental fee and they keep the balance, basically. We buy their accounts receivable from them, which are your authorized charges, your ChargeX or your Visa, MasterCard. We purchase that from them and they are paid basically in cash on a daily basis.

Mr Hoy: So if a driver took two weeks off for his purposes, that's vacation time, but you don't keep records of that.

Mr Flinn: We don't keep records, no.

Mr Hoy: You're not really particularly interested.

Mr Flinn: No. As long as we have some consistency in terms of we know that there's going to be a regular — by and large, you have people who are coming in who rent their cars on a regular basis. They'll tell us, "I'm going to be taking off." That's fine, we'll get somebody else.

Mr Hoy: Your situation is going to be, or similar types of employment arrangements — my expectation would be that those are going to be discussed in the second phase of the minister's discussions. The government talks about flexible standards. My opinion is that this will arise, and other variable-type work situations will come up at that time too, so I appreciate your advance notice of this variable type of work that goes on here.

The Chair: Moving to the third party, Ms Martel.

Ms Shelley Martel (Sudbury East): Thank you, Mr Flinn, for coming today. The final point that you made with respect to the presentation was that you wanted this committee to consider recognition of the contractor status in the taxi industry. I apologize for this, but I'm not clear. What does that give to you and then what does that mean for the people who drive cabs, who rent those cabs from you? Just so I'm clear on what the division of responsibility and/or benefits will be.

Mr Flinn: I think what we really want is a definition so that we can definitively — just as we have for Revenue Canada, we have met a test or criteria by virtue of our company that we conduct our business with these drivers on a contractual basis and that we are not subject to minimum wage, we are not subject to 4% vacation pay. That's detrimental against what you're asking, but we have a definition by Revenue Canada. We have one by WCB. We also have one from the employers health tax. We've met their criteria.

We have a letter on file that states, "Yes, you are." I don't have to revisit this every time somebody applies to a labour standards officer or whatever. At least we have a definition and we're all singing from the same hymn book. If I have to make modifications within my business to accommodate that, to meet the criteria, I just want a definition of what is an independent contractor so that we can have that.

Ms Martel: So you'd like to be excluded or included or just one or the other? Either your employees do have the rights and benefits that would pertain to other employees under ESA or they don't.

Mr Flinn: Exactly. We want a definition. Right now, we are just like that.

Ms Martel: What is the value or the legal backing, I guess, of the agreements that you sign with people? What kind of force do these agreements have then with respect to what the benefits of employees are and also with respect to what their responsibilities are back to you as an owner?

Mr Flinn: I don't quite understand what you're —

Mr Christopherson: I think what we're wondering is, there seems to be a legal document here. Neither of us are lawyers, but it looks like a legal document, and we wonder, what sort of legal status does this have and how does that differ from the legal status and definition that you're seeking? This is a contract of employment and it spells out what you expect from them and what they get from you. That seems to be fairly straightforward. I guess what we're unclear on, based on your presentation, is, how much more are you seeking in terms of legal status beyond this, and why?

Mr Flinn: Absolutely none. I think what we want is for it to be recognized by the Ministry of Labour that this is an enforceable contract and that we do have an independent contractor status with our drivers by virtue of that.

Mr Christopherson: Is that not —

Mr Flinn: No, that and a bus ticket downtown on a local bus — it doesn't do anything.

1450

Mr Christopherson: What about in a court?

Mr Flinn: Not with the labour standards act, but if I go to Revenue Canada, that has weight. They say, "Yes, that's a legal contract and the intent of what you're doing in the business says you are an independent contractor." I go to the WCB, they say the same thing: "Yes, that contract and the way you're conducting your business and the relationship that you have with your drivers says you are dealing with them on an independent contractor basis."

The employer health tax, same thing. You come to the Employment Standards Act, it says they're employees. But wait a minute. We don't record their hours; we don't know where they go. If they want to take off for a four-hour lunch, that's up to them. They're economically driven. We don't direct them. We don't tell them where to go or what to do. "That doesn't matter; you're still an employee." That and a bus ticket will get me downtown on a local bus.

Mr Christopherson: But are you still subject to an employment standards officer coming in and enforcing, and why is that a problem?

Mr Flinn: In what way is it a problem?

Mr Christopherson: If the employment standards officers are determining that your contractors are employees for purposes of interpretation of the legislation, and employment standards officers then follow through based on that, I still fail to understand where the problem is.

Mr Flinn: Every taxi operation right across this province is deemed to be an employer-employee relationship, even though the intent or how this industry has worked for umpteen years has been on an independent

contractor basis. We can be held responsible for minimum wage, vacation pay and termination pay for every one of our taxi drivers. We don't even know how many hours they work.

Mr Christopherson: How would you not know? You have to pay them.

Mr Flinn: We don't. They pay us a rental. They rent the car from us.

Mr Christopherson: I see.

Mr Flinn: For a percentage of their revenue.

Mr Christopherson: How does the ministry respond when you make this case? Obviously it's been appealed or presented at higher levels than just a single officer level. Someone must have adjudicated what you're saying versus what an employment standards officer would say and reached a ruling that has a heavier weight. Has that happened?

Mr Flinn: There have been a couple of cases that have determined certain hours, I guess for the purpose of trying to determine these things. But the point is, the intent of this business has been, over umpteen years — I drove taxi just after high school. The intent has always been that you're an independent contractor, since day one. I don't think any taxi operation in this province, unless you're in a very small community, pays minimum wage. In most cases, if you go to some of the major centres, such as Toronto, you'll find that taxi driving is an entry-level employment situation for a lot of immigrants who are coming into the country. It's an entry-level and it's a way of being an entrepreneur, the self-sufficient entrepreneur. They can create their own business and then economically they move on.

Mr Christopherson: So at the end of the day, these folks are living less than minimum wage.

Mr Flinn: The availability is up to them. If they want to go and have a good snooze for three hours, that's up to them. The aggressive ones want to be sitting outside the front door here.

Mr Baird: I'll go quickly. I think what you said are two things. One is, set an appropriate definition and standard, which is a reason why we're undertaking a complete review of the Employment Standards Act over the next eight months: to be able to recognize the realities of the new workforce. For example, telemarketers aren't covered under the act. We have huge numbers of home-based workers that we didn't have when the act was written in 1974. So I certainly hear you loud and clear.

One of the business people we spoke to in Hamilton — I think he was a hardware store owner — said: "I don't care what you do to regulate me; just tell me what it is. Tell me simply and straightforwardly and be clear and be consistent." I suspect he cared how we regulated him, but the bigger point was, "Just tell me what to do and I'll do it," which we all listened to.

I guess I find it strange — just in reading the appendices to your presentation, the Workers' Compensation Board writes you: "...it has been determined that the owner-drivers of your company are independent operators..." Revenue Canada writes you: "We are of the opinion that they are employed in insurable employment for the purpose of the Unemployment Insurance Act..." The Ministry of Finance for the employer health tax

writes: "...taxi drivers are self-employed independent operators..."

From our end as government, could we not come up with a uniform definition that would not only help us in administering the various payroll taxes and regulations but as well make it as easy as possible for you to administer them, tell you exactly what you're responsible for, be clear and be consistent, just to make it easier for everyone? I think we'd have a much better chance of enforcing regulations if we would just be clear and specific as to what they are. I'll certainly bring this back to the minister for the review when it gets under way. Thank you.

Mr Bill Grimmer (Muskoka-Georgian Bay): Thank you, Mr Flinn. I just have some questions of your inquiry here. I don't have a working knowledge of the details of the Employment Standards Act, but I do have a copy of it here. It seems to me that the problem you're raising would fall under the definition of "employee" in the act. Have you looked into that?

Mr Flinn: That's what we are —

Mr Grimmer: The definition says, "Employee" includes a person who...receives any instruction or training in the activity, business, work, trade, occupation or profession of the employer..." These people you hire, are they not dispatched?

Mr Flinn: The calls are dispatched. The driver has the option of taking it or not. He's in a queue. In other words, he can take a fare or not take a fare.

Mr Grimmer: Do you not have your company's name on the taxi?

Mr Flinn: We do on our taxi. Yes, that's correct.

Mr Grimmer: Are you going to keep people around driving your taxis who don't take instruction from the dispatcher?

Mr Flinn: We're renting the vehicles out, and it's up to them to determine where or what — it's economically driven. We don't try to direct them.

Mr Grimmer: If I go to hire a taxi for a trip across Sudbury, I wouldn't call your driver. That would be an independent contract, if I called your driver and said, "Joe, please pick me up." I call your company; you then ask one of these people, who must be under your instruction, to come and pick me up.

Mr Flinn: We put the call over the air and the driver who is in the queue would acknowledge that and then accept that call and go out on that call. If you knew that particular taxi driver and he has a cellular phone in his car and you know him fairly well, you can pick up the phone and phone him directly and ask him: "Joe, would you come and pick me up? I'm going out to the airport." He did so on his own. They do that too.

Mr Grimmer: The bulk of his work would come through direction from your dispatcher.

Mr Flinn: That's correct, yes. There is somewhat of a dependency, even in Toronto. I always find Toronto is probably as open as possible because there are so many flag fares. We don't have that in this particular community because we're more radio-driven. You don't just stand outside waiting for a taxi, because they just don't pop up every minute. In Toronto, it's different. Downtown there,

you just walk outside and you just raise your arms and you'll have three cabs right away.

Mr Chudleigh: Not when it's raining.

Mr Grimmett: Are you asking us to change the definition of "employee" under the act?

Mr Flinn: What I would like to see is a clear definition of an independent contractor within the taxi industry. Is he an employee? Let me know. What is the definition of a contractor? Then I can at least work towards having that in place.

Mr Grimmett: Currently, the ministry must consider your taxi drivers to be employees.

Mr Flinn: That's correct.

Mr Grimmett: So you are asking for a redefinition of "employee."

Mr Flinn: Exactly, in relation to the taxi. But Revenue Canada says not; the employer health tax says they're not; the WCB says they're an independent contractor. I have a contract that I try to draw up so that everybody knows where everybody sits and that this is not an employer-employee relationship. Like I said, that and a bus ticket is going to get me downtown on a local bus because it doesn't matter, according to the ministry.

The Chair: Thank you very much for appearing before us here and making your presentation today. We appreciate it.

1500

SUDBURY WOMEN'S CENTRE

The Chair: That leads us to the Sudbury Women's Centre. Good afternoon. Welcome to the committee.

Ms Donna Mayer: Thank you for the opportunity to present to you today on Bill 49, the amendments to the Employment Standards Act. The Sudbury Women's Centre is a resource and referral centre for women. As well, we advocate for equality and women's rights. We also provide a monthly legal clinic for women.

The women's centre does not support changes to the Employment Standards Act where they reduce the rights of workers. We are particularly alarmed at the provisions which will have the most effect on vulnerable workers, including non-unionized, part-time and single-wage earners, many of whom, if not most, are women.

Perhaps the most fundamental assault in this bill against workers is the restricted limitation period. We know that 90% of claims of violation of the Employment Standards Act occur after the worker has left the employ of the offender. The main reason for this is fear of repercussions: job loss, harassment, poor shift scheduling and so on.

I am familiar with a case right now where a worker has left a job for another and is waiting until the probationary period of that job has passed before filing a claim with employment standards. The reason is that this worker would go back to the employer who violated the act because it is better to have a bad job than no job at all.

Having another job to go to is a key determinant in the decision as to when to file with employment standards. With the high unemployment rate and the changing job market, now is not the time to restrict the limitation period. If anything, now is the time to extend the limitation period.

The Human Rights Code has a six-month limitation period. At the Sudbury Women's Centre we are very familiar with how restrictive this six-month period is. We are currently working with Mary Ross, who left her job due to harassment because of her sexual orientation.

Fighting for her rights is a new thing for Mary, and she learned the hard way how difficult it is to have her rights enforced. Mary was sent on a wild-goose chase by the Human Rights Commission when they advised her to seek civil remedy. Then she met a lawyer who she believed knew what to do but didn't, and by the time Mary found out how to get her rights enforced the six-month limitation period had just passed.

Mary has since learned how to advocate for herself with the support of the women's centre and the Sudbury All Gay Alliance. She has built the campaign to end employment discrimination. This campaign is still in progress. What we have accomplished is having the Human Rights Commission acknowledge the fact that Mary's case does have merit, that there was evidence of discrimination based on sexual orientation, but unfortunately the six-month limitation period restricts Mary from having her rights enforced.

Six months is simply not enough time for workers to seek and obtain qualified legal advice and ensure that their rights are properly defended. The limitation period must remain at two years or be increased. It is true that with a two-year limitation period employers may have longer to worry about whether or not they will be caught for violating their employees. However, more workers will be able to ensure they will get what is rightfully theirs.

The amendment calling for workers to choose between the courts and the employment standards office to resolve their claim and to make this decision within two weeks is grossly restrictive. This is true particularly given the premise that the fewer claims handled by employment standards, the better.

Low-income people do not have access to the legal system. The Ontario legal aid plan does not cover these cases. Although Small Claims Court is available to people without representation, they do need some guidance and education to be successful there, particularly if the other party has a high-powered lawyer, as employers are inclined to have. In Sudbury our community legal clinic has been on a caseload restriction for over six years. This means they do not handle a wide array of cases, including Small Claims Court matters, and low-income people will be left to fend for themselves.

Access to justice must not be denied. Workers must be able to have their rights enforced by the employment standards office.

It is imperative also that there be no minimum claim limit, and certainly such a limit should not be left to the whim of cabinet through regulation.

We understand and accept that the government must reduce costs. However, we do not believe that women, or any worker, should work for free to help the government reduce costs or to pay for a tax cut to the rich.

Throughout our hearings various minimum levels have been suggested. The \$25 minimum suggested by Mr John Baird is a good example. It has been argued that

\$25 is not a lot of money and is simply not worth the government's time and money to investigate. In fact, \$25 is an enormous amount of money to a sole-support mother working at minimum wage.

Perhaps government members have not been shopping for their own groceries. That may be a task another member of your family does on your behalf. However, if you have had to buy your own tuna lately you will know that \$25 does make a difference at the cash register, that \$25 will buy you 20 litres of milk. That's nearly a month's worth of milk for a family of four.

For families with low incomes, the \$25 could be the difference between going to the food bank and going to the grocery store. The value of that \$25 is even more significant now, as women face user fees when they bring their children to the beach, the library, the pharmacy and so on.

The ripple effect of withholding \$25 from a low-income woman is not cost-effective for government. Higher poverty means higher costs for government. The government will pay for poverty in increased health care costs, social services costs and, regrettably, law enforcement. If the government wants to recover investigation costs, you should bill the costs to the offenders. The government must not further victimize the victims.

In the matter of maximum claims, any amount owed should be paid. To institute a maximum claim is to institute legalized theft from employees.

Several amendments can be made to the act to actually improve it. Let me give you two: Investigate all employment practices where an employer has been found to be in violation as a result of an investigation of one claim — the likelihood of other workers in the same workplace suffering the same injustices is quite high; improve access to enforcement by permitting anonymous claims with third-party representation, such as a legal clinic. As well, the current act should be enforced more strictly.

In order to improve workers' knowledge of their rights, additional money should be provided to the community legal clinics in Ontario. Legal clinics are already designed to provide legal education to low-income people. The infrastructure is already in place. However, cutbacks have impeded their abilities in this area; case work takes precedence over legal education.

In order to improve employers' knowledge of their responsibilities, perhaps an intensive training course as a prerequisite to obtaining a business licence or renewing a business licence would help. The training must be mandatory to ensure employers are aware of their responsibilities before they choose to violate them.

In summary, the Sudbury Women's Centre asks that this government committee reject all amendments which reduce the rights of workers. The limitation for claims must not be reduced. There should be no maximum claim limit. There should be no minimum claim limit. There should be no way to contract lower minimum standards.

Once again, thank you for the opportunity to present this submission. I look forward to your questions.

Mr Christopherson: Thank you for your presentation. I think it's fair to say that we've had quite a number of submissions across the province from many delegations

concerned about the disproportionate impact of Bill 49 on women. We've made the case throughout these hearings that this is just one more piece of disproportionate, negative impact on women. When we take a look at the 22% cut to the poorest of the poor, in many cases those are families headed up by women. The attack on pay equity, the revoking and repealing of the employment equity legislation, the cutting back of the battered women's programs, now the recent — and I think in Sudbury here it's an issue too — the family support program office being closed, all these issues disproportionately affect women, particularly low-income women. I can assure you that we will continue to make that case and try to encourage the government to recognize and be sensitive to the impact this is having, and hopefully at some point maybe it will get through. But we'll continue to raise that time and time again, I assure you.

I want to focus first on the idea of the minimum claim. First of all we've had no real, acceptable rationale for this from the government other than that it's too low to bother with, that it's just not effective government; they can make their own smoke-and-mirrors argument. The fact of the matter is, what it's going to do is say to an awful lot of employees, "Money that you're owed, that you've worked for, that you have coming to you, de facto you're going to have to forfeit it."

If you link this with the six months, it does allow the most unscrupulous of employers to actually schedule what amounts to legalized theft, as long as they stay just under the limit, within a six-month period. Times every employee, that's twice a year, you can be taking significant money out of the pockets of the most vulnerable, and usually it's those who are barely making above minimum wage and have little or no benefits on top of that. That's what we find so insidious about this, that the impact is going to be on those who have the least, and those we have to have these standards for in the first place are being given a licence to "go and do not only what you've been doing, but go do more; we'll make it as easy as possible."

1510

I'd like to believe the government is not doing that deliberately. We'll have to wait and see what the final verdict is on that. But certainly that's the result. This government refuses to admit that. They just gloss over it. I assure you they will today; they've done it in every community we've been in. They just gloss over this issue and they won't come to grips with what this really means. The fact that they won't tell us what the minimum is, by saying, "Well, we're not planning to put in a minimum right now" — give me a break. If you're not planning to put in a minimum, why would you put in the ability to do it?

The other thing is that once they get a minimum in place, very quietly over the next few years that minimum starts to rise further and further, and more and more people get hurt for more and more money. There's just no rational argument for this. This is money that people are entitled to.

That's the story we have heard across Ontario. Am I painting a picture that's different from what you think the reality will be here in Sudbury?

Ms Mayer: Not at all. You're absolutely right; it is the most vulnerable, people with the least amount of money, who will be most affected by these changes. It's quite in line with the history of what this government has been doing, particularly to women. You're right, we've really had enough, and it's really demoralizing. I just can't express in a very positive way how this affects us.

Mr Christopherson: Well, they speak next. If they've got some good arguments to refute what I have put forward and what you've put forward, this is their opportunity to do that, and I hope they do rather than move on to another subject, because these are the sorts of things that you want to hear about and that other representatives of vulnerable groups want to hear about. Rather than getting off into their philosophical tangents and about streamlining things, let's talk about where the rubber hits the road and how this is going to affect people. If they think this is all a lot of rhetoric they should say so, put it on the record, stand up, look at this individual and make the case that this is all just rhetoric. I'm going to pass the floor and give them the chance to do that right this minute.

Mr Grimmett: I have some questions on the presentation, Ms Mayer. Do you keep statistics in your organization on the number of inquiries you get on this?

Ms Mayer: Mm-hmm.

Mr Grimmett: Would you be able to tell us on an annual basis the number of inquiries you'd get related to employment standards?

Ms Mayer: Specifically on employment standards? I couldn't tell you specifically on employment standards. We would have employment-related incidents.

Mr Grimmett: You're not in the legal department; you have people who work in that department separate from you?

Ms Mayer: It's the women's centre; we've got one staff person. We have a legal clinic. We solicit the support of female lawyers in the community, and they volunteer their time.

Mr Grimmett: Do they do the employment standards work?

Ms Mayer: They do whatever cases come before them. They average eight to 10 cases per month. We only do it one afternoon a month, and that's to complement the current legal aid system, legal clinics, because they don't always have access. They're primarily related to support-and-custody issues.

Mr Grimmett: You've made a suggestion here — I haven't heard it before; I haven't been on the hearings for the full time — that employers receive training before they receive a business licence. When you say "business licence," are you talking about the municipally issued vendor's permit?

Ms Mayer: That's a little outside of my area of expertise. I know that it was raised today, how do we see that employers know about their rights. I'm just wondering if we could tie it, link it to whatever business licence they're required to have in order to operate their business so that there's a mandatory requirement there.

Mr Baird: Thank you very much for your presentation. First, thank you for the last page of your presentation. So often in various communities across the province

people have said: "We don't like this part of your bill. Just do a better job." What we've been looking for is saying, "Listen, if there's a concern with part of the bill, what would you do to make it better?" We've got some extremely general responses, but we have got a few helpful ones in various testimonies.

The status quo isn't an option for us. We're not satisfied with, for example, the collections rate being only 25 cents on the dollar. But you mentioned on the last page two examples which I think are very earnest and serious attempts to provide suggestions on how specifically we could do it.

On the first one, I can indicate to you that we regularly and often do conduct such practices, but that idea, as far as being a structural one, is certainly one that I'll take back because I think it has great merit.

The second one, with respect to anonymous claims: The ministry does accept anonymous claims at the current time.

Your comment about third party representation: I don't know how that would be handled, but I'm certainly happy to bring that suggestion back too, because those are two very helpful suggestions you made, with certainly that intent, and we do appreciate that.

I guess maybe changes are never easy. If there were easy solutions to them, I'm sure the last two parties would have conducted them over the last number of years, but regrettably they haven't. The backlog of these cases is considerable. It's come down, I understand, around more than 1,200 cases that are over six or nine months old, so we are making some progress. It's not as much progress as we'd like, but we know if we continue to do the same things, we're going to get the same results, and our minister isn't happy with that. She thinks in many areas we can do a better job and we can put our resources into dealing with those most vulnerable workers in society.

You mentioned, as well as my colleague from Hamilton Centre, the issue of the minimum. I guess it is a problematic issue. You quoted a number, \$25. It's not a number that I'm proposing or suggesting; it's one that someone brought up as an example. I guess we want to ensure we're making wise use of resources. We could continue doing it now the same way and not make any changes, but that's unacceptable. I guess the question is, if conducting an investigation and issuing the order and so forth were to cost \$400 or \$500, would it make sense to do that if the issue was \$25? We had one presenter who came forward and said, "Listen, I'd sit there with a chequebook and just write people \$25 cheques if it was one twenty-fifth the cost of conducting the order." So that's I guess the idea. At the current time there is no intention to put a minimum order, but obviously it's in the legislation and obviously it provides the flexibility to do that. That's plainly —

Mr Christopherson: Does that answer satisfy you?

Mr Baird: That's plainly obvious and that's where we're coming from.

I guess the answer is, if you think we're doing an acceptable job now in many areas — in many areas we're not. We heard some very, very good testimony from some folks in the city of Toronto talking about the

number of immigrant women working in their basements making \$2 or \$3 an hour in the garment trade. Obviously the act has not worked for them. Obviously we've got to do a better job for them. We've got to put more of our resources to go after those vulnerable workers who are systematically avoided.

My colleague also mentioned that people could break these rules to the minimum dollar amount once every six months. The legislation contains very specific provisions to extend the period from six months if it's a regular and systematic breaking of the regulations. So that's certainly something we'll give some thought to.

Ms Mayer: I think I did say in the presentation that, yes, it is worthwhile spending \$400 to get that \$25 for a sole-support mother who can buy 20 litres of milk with it and won't have to go to the food bank and won't turn to crime and won't turn to shoplifting.

Mr Baird: I appreciate that. I very much —

Mr Christopherson: Especially when you told them to go out and get the jobs when you cut the social services.

Mr Baird: Do you want more time?

Mr Christopherson: Sure. Will you give it to me?

Mr Baird: We're not suggesting for a moment that that \$25 isn't important. The examples you gave are very relevant. I guess the question is that right now there's a huge backlog. There was a huge backlog when my colleagues were in government. They are the ones who disbanded the collection agency. They're the ones who chose to do nothing as opposed to — if they couldn't do it perfect, they didn't do anything.

Ms Martel: How many staff are you cutting, John?

Mr Baird: We're not cutting any health and safety inspectors like you did. How many health and safety inspectors did you cut?

The Chair: Order.

Mr Baird: How many health and safety inspectors did you cut? Seven per cent. And were there any public hearings about that? Did one single member of the NDP caucus ever rise in the House to discuss that? When you disbanded the collection agency, were there hearings across the province about that? Did you ever discuss that?

Ms Martel: Do you want to tell me how this is going to help garment workers when you make it more flexible?

Mr Baird: Did you ever discuss that? No, there was no consultation. They just did it behind closed doors and in secret. At least we're certainly being upfront about it. You never —

Mr Christopherson: We had to force you to come up to Sudbury.

Ms Martel: When you allow employers to rip them off, it'll be make it more flexible, all right.

The Chair: Order.

Mr Baird: You never —

Interjections.

The Chair: Order, all of you. Order. That includes you, thank you.

Mr Baird: Did your government bring it up in the House, the health and safety inspectors? It never did, because you didn't —

The Chair: Mr Baird, you're out of order.

Mr Baird: We brought it up in the House and you never did, ever. Ever. You never brought it up. You did a bad job.

The Chair: Both of you are cutting into the time of other presenters. Please show some respect to the people who have taken the time to come before us here today. Ms Mayer.

Ms Mayer: In reply, I'd like to say that I don't think the appropriate way to reduce your caseload is by telling people they don't have a case. They're owed this money. That was honest work they did, and if they're owed it, they should be paid it. To cut the welfare rolls the way you did and say that's reducing the caseload is the same idea. It's not reducing the caseload. It's sending the problem to people's own homes, where they take it out on their families, where we'll have increased wife abuse and all kinds of other repercussions from this sort of activity. That's not the way to reduce your caseload.

The Chair: Thank you, Ms Mayer. We appreciate your taking the time to make a presentation before us here today.

That leads us now to the Sudbury and District Hotel and Motel Association.

Mr Hoy: What about the Liberals? We didn't have our full time.

The Chair: Oh, forgive me, Ms Mayer; I was distracted there. Thank you, Mr Hoy. Mr Lalonde.

1520

Mr Lalonde: I'd like to say that I'm really in support of what you mention on page 4 of your brief. Yes, I would fully agree with you to investigate all employment practices where an employer has been found to be in violation. But the problem there will be when we pass this bill is that we might not have the personnel in place, since the government is planning on laying off 45 enforcement officers.

It was mentioned yesterday, and I really support this, that anybody who is caught in default should have his name published so in the future, really, people will think twice before they go for a job at that place and that person will think twice before he goes against the Employment Standards Act.

It was also mentioned that workers should be better educated on the Employment Standards Act. I fully agree with this. At the present time, especially in small communities, the employers don't know much about the Employment Standards Act.

One question I have for you is that this amendment allows employees to negotiate lower standards for hours of work. Do you think this would have an effect on the quality of life of families, especially on women?

Ms Mayer: Absolutely. That's who's often left at home to care for the family. Earlier you heard about suggestions of expanding the workweek. We know that some of the workers at Falconbridge are subjected to shifts that keep them away from their families for a long time. There is an effect on the family, and the burden of looking after things falls unduly on the women and the children.

Mr Lalonde: In my past experience in this, when the employer was asking the employee to do more hours of

work, this will increase the sick leave period times, will increase the danger of having more accidents, and when those things happen, less revenues are coming into the family. Especially when the women are involved in the workplace conditions sometimes, due to longer hours they cannot look after their children properly at home, and then it becomes a problem in the community also.

Ms Mayer: Yes, and there's the matter of day care too, and we obviously don't have enough child care available right now.

Mr Hoy: I too want to thank you for your presentation this afternoon. I want to talk a little bit about this \$100 minimum and very quickly say that I have some great reservations about the \$10,000 maximum. On the \$100 minimum, I have persons who come to my constituency office, and some of the stories and the problems that they're facing, the \$100 is by degree a lot of money for some of these people.

The government not having said explicitly whether it's going to be \$100 or whatever makes me wonder if it isn't going to be higher than that. Why go through all the grief of having people express an opinion that there should not be a minimum if it's only \$100? I think they would just erase that \$100 figure. So it gives me some cause to wonder if it isn't really going to be higher than that, not to mention that they don't tell us what it is as we go from community to community. So I'm really nervous that it could be much higher than that because, government being as it is, they don't want to suffer a lot of grief for any reason. So I'm worried it could be higher.

The other point is that the job market being what it is, and that is a poor one, people are willing to do certain things in order to maintain the necessities of life and they're putting up with quite a little bit right now. I think we have to be very careful about minimum standards and these \$100 figures such as have been bandied about today.

Ms Mayer: Absolutely. I agree that the fact that they've chosen to establish the minimum by regulation through an order in council suggests that it can move quite easily without actually ever going into the Legislature, and it does leave the door open for any figure to come out. For people who can reach into their pocket and pull out \$20 and give it to someone in need — \$20 doesn't sound like a lot. I can't do that. There are lots of people who can't do that, and \$20 means getting from this day to that day and it's a lot of money. You just don't realize it unless you're living it.

The Chair: After our first false stop, thank you again, Ms Mayer.

SUDBURY AND DISTRICT HOTEL AND MOTEL ASSOCIATION

The Chair: Now we'll proceed to the Sudbury and District Hotel and Motel Association. Good afternoon. Welcome to the committee. Again, we have 30 minutes for you to divide as you see fit.

Mr Richard Clement: Thank you very much. My name is Richard Clement and I would like to thank you and your committee for the opportunity to appear before you today. I am the president of the Sudbury hotel, motel

and restaurant association, which makes me a director of zone 22, which is from the French River to Chapleau, Elliot Lake to Hagar, and including Manitoulin Island. I have one of the largest zones in the province to look after, and I also have 75 members. I had 120 or 130 members before. Now I'm down to 75 due to loss of business and what not. I'm also the director of food and beverage for the Ontario Hotel and Motel Association for all of Ontario.

Employment standards reform is important and therefore we support the government's initiative to fixing it. Bill 49 is the first stage of this process and we look forward to the extensive consultation process that we understand will precede the introduction of the second stage of this reform package.

Bill 49, in our estimation and supported by our advisers, does not alter minimum employment standards in Ontario. What the legislation does is make technical changes to the act. These changes are aimed at improving administration and enforcement of employment standards as well as reducing ambiguity and simplifying language. We also see this bill as signalling a significant reduction in the government's role in administering and enforcing the act. Our analysis of the proposed changes is as follows.

The bill specifies that obligations under the act will be enforceable through collective agreements, as if the act were part of the collective agreement. Employees covered by collective agreements will not be permitted to file complaints under the act without the permission of the director. In essence, the grievance and arbitration procedure will replace enforcement through the administrative machinery of the act. Powers of arbitrators with respect to claims under the act will be expanded to include the powers of employment standards officers, adjudicators or referees under the act.

The bill prohibits an employee from commencing a wrongful dismissal action in court if he or she files a complaint claiming termination or severance pay under the act. Similarly, where an employee files a complaint under the act for wages owing, breach of the building services successor provisions or the benefit provisions of the act, a civil action seeking a remedy for the same matter is prohibited. These restrictions apply even if the amount owing exceeds the maximum for which an order can be made under the act. Civil actions are permitted, however, if the employee withdraws the employment standards complaint within two weeks after filing it. In parallel to the foregoing restrictions, an employee cannot initiate a complaint under the act for the specified matters if a civil action covering the same matter has been commenced. Effectively, the bill will require employees to choose whether to sue in court or to seek enforcement through the act.

The bill will make it easier for employers to establish that they have provided greater rights or benefits than are required by the act and thus obtain exemption from certain provisions of the act. When a group of collective agreement provisions — severance pay, hours of work, overtime, public holidays and vacations — are considered together, rather than individually as in the past, the collective agreement will prevail if it provides superior

rights. In addition, statutory and regulatory provisions, as well as provisions in oral, express or implied contracts, will prevail over an employment standard if they confer a greater right than is provided by the employment standard.

1530

The bill requires the length of an employee's pregnancy or parental leave to be included not only in determining seniority, as is required by the current act, but also in determining the length of service for all rights except for the completion of the probationary period. Thus, all rights in employment contracts that are service-driven will continue to accrue during the leave. Employers should review their contacts of employment to determine the impact this change will have.

Vacations: The present vacation of at least two weeks upon completion of 12 months of employment is amended to apply whether or not the employment was active employment. The pay during such vacations must not be less than 4% of the wages, excluding vacation pay, earned by the employee in the 12 months for which the vacation is given. This clarifies and simplifies the existing provisions in the act.

Employment standards officers will not be permitted to make an order for an amount greater than \$10,000 in respect of one employee, with the exception of orders relating to the breach of the pregnancy or parental leave, lie detector, retail business holiday and garnishment provisions and termination and severance pay in connection with breaches of such provisions. Arbitrators will not be subject to these restrictions. The bill provides for regulations prohibiting officers from issuing orders below the level specified in the regulations.

The bill sets out mechanisms for the director to use private collection agencies to collect amounts owing under the act. This will provide the ability to contract out a function that is now performed within the ministry. Collectors will be authorized to agree to compromises or settlements of claims if the person to whom the money is owed agrees, provided that it is not less than 75%, or such other percentage as may be prescribed, of the money to which the person is entitled, unless the director approves otherwise.

Compromises or settlements respecting money owing under the act will be binding once the money stipulated in the compromise or settlement is paid, unless the arrangement is entered into as a result of fraud or coercion. In the current act there was very little ability to contract out of the act's requirements. Employment standards officers will be given additional authority to settle complaints without making a prior finding of what wages are owing.

In a prosecution or proceeding under the act, no person will be entitled to recover money that becomes due to the person more than six months before the facts upon which the prosecution or proceeding is based first came to the knowledge of the director, subject to certain exceptions. In the current act, the limitation period is two years.

An employment standards officer will be deemed to have refused to issue an order if a proceeding is not commenced within two years after the facts upon which the refusal is based first came to the knowledge of the

director. Employees may request a review of an order or a refusal to issue an order, in writing, within 45 days. The director has the discretion to extend this time limit in certain circumstances. Certain orders may be reviewed by way of a hearing. In the case of the employers, application for a hearing is dependent on paying the wages and administrative costs required by the order.

Complaints under the act will be able to be filed in either written or electronic form. Employment standards officers will be able to obtain copies of documents kept in electronic form. Certain changes concerning the service of documents under the act are also made.

In conclusion, we support Bill 49, as it signals a progressive change in employment standards in Ontario. It is not reducing minimum standards. We are not, and I want to clarify, seeking a reduction in benefits. We are good employers and want to ensure our employees are treated fairly and receive all that is their due. That's all I have to say about that.

The Chair: Thank you very much. It looks like we've got five minutes for each caucus for questioning. This time it will commence with the government members.

Mr Barrett: Thank you, Mr Clement, for your remarks on behalf of the Sudbury and District Hotel and Motel Association. I suspect you're speaking for the Ontario association as well. Certainly in all of our areas we also see your association, and the businesses that you represent are certainly a part of our ridings.

Earlier today one of the presenters made reference to the fact that our government and business are looking to small business to be the driving force in reviving our economy across Ontario. However, there are barriers to people like yourself to stay in business or to open new businesses and to create jobs. From what we're hearing from small business, one of the barriers is the discouraging collection of rules and regulations and red tape and the amount of time that people like yourself spend on paperwork or the people you need to hire to fill out the forms to meet various government regulations. This kind of red tape is a tax on you and it's a tax on all of us, in a sense.

With this committee, in considering the Employment Standards Act — and as you've indicated, we are not looking to reduce minimum standards; we are looking to protect employment standards, and not only to protect them but also to enhance employment standards in Ontario. But as we rewrite this legislation, we have to be careful that we don't create more unnecessary bureaucracy in the form of either additional people hired in government or in the paperwork.

From your perspective, can you give us some suggestions of how best to rework this to make this a little more user-friendly, to streamline it? We have to be efficient, just as you do, and we have to come up with the most cost-effective way to run this business. I wonder, from your perspective, have you any suggestions?

Mr Clement: In our industry, we're here to entertain people in more ways than one. We have lodging for them, we have food for them, we have drink for them and we have entertainment in lounges and bars and what not and taverns. Our intent is to hire people to look after people who come in.

I could give you as an example, two weeks ago today we had an ad in the paper to hire 10 people to work in one of our newly renovated bars upstairs. We had 365 applicants answer the call. We had to get five people, including my son — we're a family-run business here; we're a small business. I saw all the people lined up to be interviewed. I said to myself: "What the hell is going on? There's nobody working? What's the problem here?" Out of those 365 people, I would say there were maybe 80 to 100 who were looking for work — just to get a job, just to work. The rest of them, I'm sorry to say, I wouldn't hire them. They went through just a normal application for a job.

We have to do something. We like to say that we're the sparkplug in our industry to bring in tourists, to get the people out in these restaurants and taverns and bars and what not to start spending money so we can hire people.

I remember years and years ago — I've been in this business 29 years — in this building 29 years — and I remember people coming to me with their children, young boys and young girls, saying, "Could you give my kid a job?" I'd say, "Sure, what's he doing Saturday?" "He's not doing anything. I want him to make himself a few dollars." I'd say, "Go outside there and rake around the garbage bin and cut some grass over there and do this and do that, and I'll pay you," whatever the wage was then. I used to do that almost every weekend. It wasn't a handout; it was a job. The kid did the job and I said, "I know your dad and I know your mother, and if you don't do a good job, you're going to get a swift kick in the butt," as we used to do with the kids, and their parents wanted me to tell them that.

Now I'm the one who goes out and rakes because I can't afford to have anybody do it. The system, I don't know, seems to be lacking something. There's nobody going out. I don't mean just in my business; I mean in every business in town. There's a shopping centre downtown that's just about empty, and it shouldn't be. Sudbury is a wonderful city. This whole area is mining. If it wasn't for mining in this city we wouldn't have too much business in our industry, because I'm doing a lot of catering right now with mining firms and meetings and what not.

1540

I don't know what the answer is. I don't know every act that I have to follow as a hotel man, but I do know one thing: We are licensed to sell alcohol and rent rooms and all this, and we have such a list of regulations we have to follow through that. I don't usually stick my nose in too much when it comes to the labour part of it. If we have a problem, I'll talk to the person. We have an open door policy. If you've got a problem with your job in our establishment, we'll talk about it and whatever is best for you and best for me, then we'll agree on it. There's no need to go to all ends.

I had some incidents where a person from the Ministry of Labour came to see me and said, "This girl said this and that; what do you say about that?" I said, "Look, that's false." But I did whatever he told me to do. I did it because I figured that's what you're supposed to do when you're in business. You're supposed to listen to the

agent who works for the Ministry of Labour, or whether it be for the income tax or GST or PST or anything like that. You just listen. When the inspector comes in, you listen to him. If he tells you to do something, you do it.

That's the way I was brought up in this business, and that's the way I run my business. If you've got a problem, let's talk about it. If it's really serious, there's lies or fraud or whatever, there's theft, then it's a little more serious. Then we'll bring the law into it. Then we'll get our lawyers out and everybody will spend money on something that we shouldn't be spending money on.

We believe in an honest day's work for an honest day's pay; that's all I'm getting at.

Mr Hoy: I appreciate your comments this afternoon. We recognize that most of the business people are good and honest. They have an open door policy, like you do, with their employees. But the concerns, of course, come around the very few who will cause problems, so this act is here before us and we've got to deal with all aspects that have been brought up today and in days past, and there may be other things come up as we go through the rest of these hearings.

It would be wonderful in life if we could reduce ambiguity and simplify the language of legislation, but I don't think that's going to happen. The way society has evolved — and we have lawyers and courts, those two aspects always there — I think it's going to be very difficult to draft legislation that is in simple language. However, with some past experience I've had, the brochures and the guidelines that flow from that act can be written in language that people can understand. Let's hope that's what happens here.

The act itself, I expect, and the regulations will look very onerous, but if we can provide information in a step-by-step way to employers and employees so that they understand quite clearly what both their responsibilities are, I think we'll be taking a giant step.

In your association — not particularly at this facility but across Ontario — do you have unionized employees and unorganized?

Mr Clement: Yes, we do.

Mr Hoy: The nature of the hotel-motel business, I'm assuming, is that some employees, for instance, might come in at 8 o'clock, do a certain amount of work, leave at 11, maybe come back at 3 o'clock, just for example, and then maybe go home at 6, and that time of thing. The nature of the business would dictate some of that, particularly in maybe the housekeeping staff and the restaurant part.

Mr Clement: Housekeeping in an establishment like mine works from 9 o'clock in the morning until 4 o'clock. If it's really busy, it just takes longer to do. We have about 40 to 45 employees, but they're all on 20 hours a week, 30 hours a week. We don't have anybody steady except for the front desk clerks, who have all the responsibilities of the hotel. As far as the fire act is concerned, we have a 24-hour shift in that aspect.

In our kitchens, for instance, we don't have a passing trade of a million people going by our door every day. Even at lunchtime today, we had two cooks in the back and three waitresses out front. We didn't need them all, but we had them here. We were ready for the committee

to go up and have lunch or whatever. These are the types of things that create a lot of loss in our business. When you have over the number of employees, it doesn't work out, especially when it comes to food. But we do have a cook who comes in in the morning, and he agrees to it before he starts; he's told before he starts, "Your hours are from 11 o'clock in the morning till 2, and then you take from then till 4 o'clock off and come back at 4:30 and work till 10 o'clock." So you have to get two people on the shift, unless you have enough work to create another shift in a smaller place like mine. I'm sure in other hotels in bigger cities, they have a full line of people working in and out. The labour cost is expensive.

Mr Hoy: I really don't know, so this is why I'm asking you. The old adage that you should know the answer before you ask is not holding true here.

That same situation, where people might work, let's say, from 11 o'clock in the morning till 1 o'clock and then come back at 3 till 6, or any variable like that, does that exist in a unionized facility as well?

Mr Clement: I wouldn't know.

Mr Hoy: You're not sure of that.

Mr Clement: I'm not sure. Let's say I have four or five waiters and waitresses working upstairs, and if one is working the afternoon shift and wants the night off, they just — as I said, it's an open-door policy. They say: "Richard, I'd like to switch my shift tonight with the other one if I could. Would that be possible?" And I say, "Okay. If you didn't have any extra time off that you needed, if you have to go to a wedding or a rehearsal or something, go ahead." That's how we do it with the open-door policy. It's not like you have to work that and that's it.

Mr Hoy: I would think you're probably finding excellent employees, with 360-some coming for — what was that opening? One job?

Mr Clement: It's between five and 10 jobs, part-time, of course, because at this time of year a lot of people are moving into town from out of town. I hired a cook the other day — he's coming to see me Monday — who's from close to Niagara Falls and is coming up to the university here. He's able to work from 4 o'clock Monday to Friday, weekends as well; any time after 4 o'clock is when he finishes university. He needs the money and he's going to be staying in Sudbury. There's one person I'm looking at.

Mr Hoy: I would think you're going to get quality people with the job market being as flooded as it is, and I think, sadly, that's going to continue for some time. The numbers you quoted are amazing for that kind of thing.

Mr Chudleigh: Thirty thousand new jobs last month.

Mr Hoy: Well, you have 700,000 yet to go, so we'll see. They've only got three years, so we'll see how that happens.

Mr Clement: I appreciate your comments.

Ms Martel: The government says they're on track. I guess he means they're on track for the latest downward revision of the number of jobs to be created announced in the budget, which was about 235,000 or maybe 250,000 versus the 750,000 promised in the Common Sense Revolution.

Anyway, Mr Clement, thank you very much for making your presentation here today. I wanted to ask you

a couple of questions. First of all, you indicated support for this piece of legislation on the final page in your conclusion. I'm going to assume, hopefully rightly, that you're indicating support because you see something from this that's going to positively benefit your business, just as the people who are coming here and who are concerned about it are expressing those concerns because they feel it's going to hurt the people they represent. I wonder if you can tell the committee what the benefits are. How are the changes indicated in Bill 49 going to help your particular business here?

Mr Clement: I think it's a matter of simplifying the language. I'm not too well versed in all the different bills we have to adhere to in this business, but I do know that when I have a problem with something with the Ministry of Labour I don't know that much about it, so I get the bookkeeper or one of our office staff, and they say: "Let's get this on the table and find out what's happening. Why is this person doing this?" or "Why are we doing this to this person? What are we supposed to do and how are we going to go about it?"

I find it's too much one against the other. Employees and employers should not be against each other; they should be together and work things out. I know that's a pretty far-fetched statement, but this is where it's at. You have to work together.

1550

Ms Martel: That's a fair comment. I'm just curious about what is it in this bill that you think is going to allow for that greater cooperation between employers and employees to work those kinds of labour issues out?

Mr Clement: To be honest with you, I don't know enough about the bill to give you an answer on that, and I wouldn't want to say anything that I don't know what I'm talking about.

Ms Martel: Fair enough. The government has proposed now to put a cap of \$10,000 on money that people can receive when they go to lodge a complaint under the Employment Standards Act. Do you agree with that \$10,000 cap the government is putting on?

Mr Clement: I wish I made \$10,000 last month. I don't know the answer to that question. You've got to cap it somewhere, I'd say, and if \$10,000 is not enough, then get together and do something that's equal for everyone.

Ms Martel: You said you have to cap it somewhere. What I'm trying to get at is that the money we're talking about is money people have worked for. It's not a gift, it's not a gratuity; it's money that's owing to them because they invested their labour in that particular business and, for whatever reason, have not received that money so have had to lodge a complaint in the first case. The concern I have is, if people are owed money, should they not get all of what they are owed back?

Mr Clement: I'd say so. If you worked for me and I owed you \$500, then you've got \$500 coming to you. There's no reason in the world why I shouldn't give it to you unless there was something there that you didn't — how did this amount of money come about? What would \$10,000 be in reference to? How could someone owe someone \$10,000 for doing work for them and they haven't paid them?

Ms Martel: That's part of the problem. We have had a number of cases raised before the committee members — I wasn't here — particularly in the garment industry and piecework industry, where people were not paid all the wages owing; they did not receive vacations when they were supposed to; if their employment was terminated they did not receive the money they should have been entitled to under the act for all the years of work and service they provided.

What I'm getting at is the government has decided, for some reason or another, that if people work and are owed money and didn't get that money they are owed from the employer, they can now only claim up to \$10,000 of the money they are owed. If they are owed \$40,000, they are still only going to get \$10,000. What I'm saying to you is, do you agree with what the government has put forward? You said very clearly that you're supportive of the changes here, and one of the changes they want to make is to do just that.

Mr Clement: I'll give you some examples of people coming to work, asking for a job; I interview them and they say, "By the way, I'd like to get paid under the table." I know it goes on in a lot of businesses, and it shouldn't. People who pay people under the table for work they do for them — I know of an establishment in Sudbury that's now closed that paid all its staff cash money, never collected anything, and then the guy left the country. A girl who worked for him as a waitress contacted the Ministry of Labour. What do you have to stand on? You're working for cash.

You see, that's what I'm saying. You've got to get together on something. You can't have people working for cash money under the table and nobody's paying their dues, nobody's paying anything to the government — no taxes, nothing — and this guy ends up with all the money and leaves, and you're sitting there going, "Well, I've got \$10,000 coming to me because the guy owed me."

Ms Martel: I don't think we're talking about those kinds of cases, although I'm sure they do exist; none of us would want to see that happen. I'm trying to get at this issue because the government in both cases has set a maximum amount that people can receive and a minimum. They haven't told us what the minimum amount is. What the government says is that if you're someone who believes you have been wronged and you have money owing, there will be a minimum amount of money owed to you, which will be set in the regulation — it won't even be dealt with by this committee here — for which you can actually make an application.

For example, if the government says you have to be owing at least \$500 before you can make an application to even try and get that money back, then you're stuck if you only are owed \$400 or \$300 or \$200. If people are owed money, regardless of whether it's more than \$10,000 or under \$500, aren't they entitled to receive money owing to them for the work they did in a legitimate fashion? I don't want to deal with under the table.

Mr Clement: If you worked for me and I owed you money, I should have to pay you. I don't see how anybody can let anything go that far. I really don't.

Ms Martel: I wish there wasn't, but I understand that the committee, in some presentations in Toronto, heard

that very clearly from a number of legal clinics that came representing people who in fact were owed those kinds of sums. It's a real problem.

Mr Clement: Like I say, I'm not too well versed in all this bill, but I will say one thing. I can imagine what happens in bigger companies that have thousands of employees and there's a mixup in the workforce and someone is owed money and owed money and it just accumulates and accumulates. The first thing you know, it's, "Now you owe me \$40,000." I'd say they should get together. Any form of government should get at it and say: "Look, let's get this before it gets too big. Settle it now."

Mr Baird: Within six months.

Mr Clement: In whatever time it takes so it doesn't get that far. I mean, I can't see owing anybody \$10,000.

Ms Martel: The fact is, people do. I guess you could make the suggestion to the government that it should probably take the caps off, both the minimum and the maximum, so people do get back what they have legitimately worked for and what is legitimately owed to them so that people aren't out of pocket for money they worked for.

The Chair: Thank you very much, Mr Clement, for appearing before us here today and making your presentation.

SUDBURY AND DISTRICT LABOUR COUNCIL

The Chair: That leads us to the Sudbury and District Labour Council. Good afternoon, and welcome to the committee. I'd just remind you that we have 30 minutes for you to divide as you see fit between presentation time or question-and-answer period.

Mr John Filo: Just before I start formally, I want to comment on what my friend Mr Clement mentioned during his question-and-answer period; that is, about his desire that labour-management should not be in an adversarial mode. Let me just review with you the activities that have been going on in Sudbury for a number of years.

Approximately two years ago we had a conference here called Common Ground in which diehard labour leaders such as myself and hardnosed businessmen got together and examined other paradigms in which the labour-management field could be viewed. We had a number of models that seemed very appropriate. I have to say, though, before I begin my presentation, that that type of exploration has been completely negated by your government's attitude towards the union movement and by the way in which it views labour-management relations.

First of all, to begin my presentation, I'd like to warmly welcome you to the north. I hope you enjoy some of the northern hospitality. We're always pleased when you take time away from your families and so on to come here and hear our views. In a sense, northerners often feel isolated because the lines of communication and the lines of travel are so difficult and so arduous. So welcome to Sudbury, and in preface to my remarks I might say that this business of having hearings is an excellent demonstration that you're committed to the

principles of democracy. We encourage you to continue that in the future.

I started by looking up the word "improve," and I noted that it's a verb transitive and means "to bring into a more desirable condition." Under normal circumstances I might not be too critical of the language in the title of this bill. I know that euphemisms run rampant in the fields of government and throughout the corporate world. For example, we've all heard: "Mr X has resigned to pursue other personal and professional interests. Because of his knowledge of the company and the industry, however, he has agreed to continue to serve as a paid consultant." The translation for that is, "We fired the bum but we're going to keep him on as a consultant for a while so he'll keep his mouth shut."

We in the trade union movement have become very sceptical because of the language that has been coming from the government, and I believe distrustful of this government's efforts in the labour-management sphere. To a unionist, "flexible" means the playing field is tilted towards the employer. "Minor housekeeping" means that some of the rights and privileges that our grandfathers and grandmothers and fathers and mothers fought for on the picket lines — yes, and had their heads bloodied for — half a century ago are about to be scrapped.

1600

The UN development report for 1996 ranks us first among 174 nations, beating out top contenders like the United States and Japan for the fourth time. I submit that the overriding reason for this is because of the manner in which our society in Canada, and particularly in Ontario, has determined an appropriate balance between employers' rights and workers' rights, influenced by the demands of the trade union movement.

I personally come from a very scientific background. My prime degree is in physics; we have a concept there called equilibrium. That's the sort of thing we're always trying to achieve in labour management: a degree of equilibrium, a degree of balance.

That unions are an essential fact in a democracy was more than aptly illustrated by the insistence of the Allies at the end of the Second World War that trade unions and collective bargaining be recognized in the constitutions of Germany and Japan. Some of you are too young to recall that, but I was there. As a condition of rebuilding the economies of those two countries, the recognition of collective bargaining and trade unions had to be in their constitutions. What better guarantee that tyranny and totalitarianism would not return to those countries?

We are surrounded by the effects of pragmatic unionism. In Poland, for example, the efforts of a lowly electrician led to the ultimate downfall of the Berlin Wall and the downfall of the USSR.

So if you think you're toying with something that will easily roll over and play dead, I'll tell you that the strength of people is demonstrated through their unions and we have not yet begun to show our influence and our power in this particular society.

Ontario is still the engine that drives the Canadian economy. Realistically, as Ontario's economy goes, so goes the economy of Canada. Thus, labour-management relations in Ontario exert a Canada-wide effect.

That there's a need to improve the Employment Standards Act has been apparent to the labour movement for years. While well intentioned, it has been a law with many loopholes and exclusions. Compliance has not been encouraged by the ministry and complaints have not been addressed with dispatch. Improvements would recognize the rights of workers and would facilitate the settling of claims, since presumably claims without merit would be dismissed. The current thrust of the bill is to impede and discourage the worker from obtaining what is rightfully due.

It's difficult to see an improvement when Bill 49 requires the employee to choose either to enforce a claim under the employment standards legislation or to sue the employer in the courts, since under the present act an employee can file an employment standards claim and still sue for common law notice entitlement.

The Employment Standards Act presently allows an employee to collect all the money an employer owes for vacation pay, premium for overtime hours etc. Bill 49 will place a cap of \$10,000 on most claims that the ministry will enforce. The ministry will be able to publish statistics that the legislation is working. Total dollar claims on employers will have been reduced.

Upon filing a claim with the ministry, an employee will have to make an irreversible decision within two weeks to pursue the claim under the Employment Standards Act or withdraw it and sue through the courts.

Bill 49 will certainly improve the lot of private collection agencies. Settlements will be negotiated at substantial discounts to close the accounts and to provide the agency its commission.

There are many administrative changes that could be made that would make the Employment Standards Act more effective and efficient and that would more closely approach an ideal of justice between employer and employee.

Individual complaints should automatically trigger an audit of the entire employer's workforce. Complaints could be anonymous or could be third-party complaints. Compulsory education campaigns could be initiated in industries with bad track records as employers. Punitive assessments must be levied against repeat and continuing offenders. Time limits that favour the employee rather than the non-compliant employer and the settling of claims in a timely manner would rationalize the deficiencies in the act. Workers who elect to enforce the act should be afforded protection through the imposition of meaningful penalties to employers who seek to resolve these complaints by firing the worker.

In Ontario, all workers should be covered by the act. The exclusion of significant numbers is a licence to those employers to abuse the relationship they have with their employees.

It should not be possible for an employer to avoid liability through the device of contractor and subcontractor.

It's fair to say, I believe, that Bill 49 is not an improvement to working people. It improves the lot of the employer who would countenance no justice for the employee and would allow the employer to exploit the employee by removing those protections that currently exist.

Perhaps this committee will, in its report, state, "Modifications are under way to correct certain minor difficulties in Bill 49." The translation of that is, "We dumped the whole idea and are starting over with the objective of enforcing the rights of hard-working employees who are being mercilessly exploited by unscrupulous employers."

The checks and balances which have contributed to fashioning the enviable society in which we live and work will be seriously eroded with the enactment of this present legislation.

The Chair: That has allowed us six minutes for questioning per caucus, and the questioning this time will commence with the official opposition.

Mr Hoy: Thank you for your presentation. I noticed quite directly that you talked about the Second World War, trade unions and collective bargaining. Those were difficult years. I can recall my grandmother, who was in Europe at the time — I think she was about 16 — saying that when she walked home at night she had a potato in her pocket, and if she'd been caught with that, she probably would have been shot. It simply was quite a different era.

On the issue of \$10,000 cap on claims, the government tells us — and we have no reason not to believe this particular fact — that 96% of the claims are under \$10,000 now, so for me, it makes it difficult to understand why they want to cap it there. However, 4% of the claims are above \$10,000, and it was suggested that those claims would come from executive persons, people higher up on the income scale. That argument probably has some validity, but we have also heard from others that even those making the minimum wage could, on occasion, have claims over \$10,000.

I think it would be good to know from the government what percentage of the total dollars collected comes from that 4% as compared to the total dollars collected at the 96% rate. I agree with you. I have great difficulty with the \$10,000 cap. I also have difficulty with the minimum threshold where one can make a claim. Do you have any opinion about this notion that people claiming above \$10,000 would necessarily be of executive employment or very much higher on the income scale?

1610

Mr Filo: If I may, this is a very imperfect analogy, but if we look at the way in which income and wealth is distributed in our society and we take the top 4% of all income in the world, that includes not only the 358 billionaires we have but several thousand millionaires. For example, I read just the other day that if you averaged the amount of wealth a billionaire has that presently exists in the world, it would equal the income of two cities like the city of Toronto. So when you talk about 4% of the claims being above there, the dollar value may in fact be equivalent to the 96% who are below it.

And why should we deal with percentages? If a person is owed money, that is a debt. People of honour have always paid their debts, and the government should not say that people of honour should have their debts limited to just \$10,000.

Mr Hoy: Thank you for that. I think we're thinking along the same lines there.

The translation you give in the second-last paragraph is, "We dump the whole idea and start over," as it pertains to Bill 49. As opposition, we've asked the government to do that. We've asked them to put this particular bill and other discussions that will come and flow as it pertains to employee-employer relations all in one package. They decided not to do that, so here we have Bill 49 before us, and I don't expect they're going to give up on it either. But our role of course will be to suggest to the government ways of modifying it, as you say in the sentence prior to that.

Mr Filo: As a spokesperson for the labour movement, I want to thank whoever it is in this committee who has influenced the government to modify some of the legislation, modify the proposal.

Ms Martel: Let me just pick up from that point. One of the things the minister did on the first day the hearings opened was to table a particularly contentious and controversial section of the bill which allowed employers to negotiate, in essence, lower standards and contract out minimum standards around hours of work, overtime pay, public holidays, paid vacation etc. That little bit of business will be tabled for the larger package of "reform," although I use that term loosely, that the government is going to bring back, I suspect, some time this fall.

While you didn't address that issue in your brief, Mr Filo, I wonder if you would like to make some comments on that particular piece of the legislation which has been tabled for the moment. I expect we're going to see it again in another form in a different bill, but it's going to come back, and the minister made that very clear. What it will do in essence is to allow employers, supposedly in consultation with their employees, to negotiate a settlement that might actually go below the floor that is now the basic rights we have for workers in the province. Do you have any conclusions you want to come to about how that would work in a unionized environment and how it might work in a non-unionized environment when the employer sits down to bargain with his or her employees?

Mr Filo: I think that for the bulk of the trade unions that exist in Ontario and in Canada there wouldn't be that much of a problem. However, with legislation like that enacted, it would allow the unions to exploit their people to the same degree that it allows the employers to exploit their employees. What it does, by removing those things and allowing what is termed as "flexibility" in it, is ensuring that weak unions will be brought to their knees.

I don't believe we should have two sets of rules. We seem to have in our society, for the people who are at the top of our pecking order in our hierarchy, a different set of rules for their behaviour than we have for working people. I think that's being exhibited in some of the proceedings we're watching on the Somalia affair, for example. Quite frankly, working people don't agree with that. We think there should be one standard, one set of rules for everybody and that they should be fair and should be arrived at through a democratic process of consultation, but that once you have set those standards those standards should be applicable to all.

Ms Martel: One other question, Mr Filo. On the first page in the second paragraph you said, "We in the trade union movement are sceptical about the government's language, particularly language used in the labour-management sphere." I wonder if you want to explain to this committee why that has come about.

Mr Filo: In the trade union movement our biggest source of effort is to enforce the collective agreement. Every word in the collective agreement has very, very specific meanings. Collective agreements do not take liberty with language in the way, obviously, the government takes liberty with it, because everything is subject to an interpretation. You can't use the public relations approach to the way in which you structure a collective agreement. I note that "to improve the Employment Standards Act" is in the title. You would not use language like that when you're drafting a collective agreement or you'd be in big trouble.

The pendulum has swung to the point where language is now being used the way George Orwell suggested it would be used. In his book 1984 he talked about double-think and doublespeak, where the meaning of a word is diametrically opposite to the meaning that is trying to be sold to the audience.

The Chair: Moving to the government —

Mr Christopherson: Do we have any more time?

The Chair: Thirty seconds.

Mr Christopherson: Great. I'll take it. I just wanted to point out that you raised an issue that I don't think has come up yet anywhere that I can recall. You talk about the fact that as a result of the cap on the \$10,000 — and I would suggest a few other things they're doing too, in terms of offloading responsibilities on to unions, putting the minimum threshold in and other things, the time frames being reduced — they, the government, "will be able to publish statistics that the legislation is working. Total claims" — total dollar claims — "on employers will have been reduced."

I think that's an interesting point. Speaking of Orwellian doublespeak, they are masters at it. I suspect you're right, and wouldn't mind your expanding on that a bit in terms of where you think they will go with that. Do you see it as part of a re-election plan? I think you're the first one to raise it.

Mr Filo: There's a perfect analogy with the social benefits act: When they came in and changed the rules on who qualifies for welfare, they were able to say that X number of people fell off the welfare rolls. It's a shell game; there's no substance to it. The people were disqualified from welfare. They were not looked after. Some of those people obviously turned to crime and turned to drugs and so on really from their frustrating position. We see the exact thing happening here. It's a beautiful PR ploy but lacking real substantive value.

Mr Christopherson: Excellent presentation. Thank you.

Mr Baird: You're someone after Mr Christopherson's heart in pointing out one of his favourite expressions, the Orwellian doublespeak line.

I want to thank you for your presentation. You mentioned, "Individual complaints would automatically

trigger an audit of the entire employer's workforce." That's something that is done now, but I'll certainly take that suggestion back and see if it's done as comprehensively as possible. It certainly is done now.

For example, there was a rather big example of that with the Screaming Tale Restaurant in eastern Ontario where we received a number of complaints. One of the first was, I think, from my colleague the member for Scarborough East. It did trigger an audit of the entire workforce, and their audit obviously was going on for far more than one individual.

1620

The question I'd ask is with respect to unions taking on the administration function in terms of the Employment Standards Act. We heard from a fellow yesterday — a number of people, actually; one yesterday, though, in Sault Ste Marie, Mark Klym. He was or is an Algoma Steel worker, and what he said was that unions are capable of taking care of their members in terms of the administration of the act. We also heard from a fellow, I believe from CUPE Local 87, in Thunder Bay on August 26. Albeit in the public sector, as I'd be the first to admit, he said in response to me telling him that our claims collection at the Ministry of Labour was 25%, he looked us straight in the eye and said, "A hundred per cent; that's what I collect, 100%."

How many current Employment Standards Act cases would arise from, let's say, the workforce you're most acquainted with, and how many would the union take care of and how many would be referred directly to the employment standards office?

Mr Filo: I can't answer that to your satisfaction because I work in an area — I'm a professor in a community college, and in that work environment I can't ever recall having an Employment Standards Act case. I can't provide you with statistics.

However, let me go back to one of the things you said, that a complaint triggers an entire audit. One of the problems — and this may not be a problem in your area but in our area — is the fact that the people who are in the Ministry of Labour have always been virtually understaffed and they have not been able to perform the duties that one would have required of them. We see an attrition in their numbers even now as we speak — there are people losing their jobs or being transferred elsewhere and so on — so we see the enforcement function as deteriorating.

Mr Wayne Wettlaufer (Kitchener): Thank you, Mr Filo, for coming, and thank you for your welcome to the north. It's very interesting. You said you feel isolated up here. There are many of us who live near Toronto who wish we were a little more isolated. We get the pollution our way.

Mr Filo: Have you ever been bitten by a blackfly?

Mr Wettlaufer: Yes, I sure have.

You state on your second page, "Improvements would recognize the rights of workers and would facilitate the settling of claims, since presumably claims without merit would be dismissed."

I come from a family where my dad was a labourer and I do have a great deal of sympathy for the labourer.

I would agree that we have to make improvements. Do you feel that 25% of the claims being paid is acceptable?

Mr Filo: In view of what the labour leader from Thunder Bay said, that 100% of the claims he goes after are paid, 25% does not seem to me to be an acceptable amount.

Mr Wettlaufer: Twenty-five per cent is what has been and what is presently being satisfied. Would you say that 75% would be acceptable?

Mr Filo: Let's start with a number that I would say would be acceptable: 100%. When you take it from there, any deviation from the 100% figure should give us cause for concern, because obviously either somebody is mistaken about what's due them or somebody is not fulfilling their obligation.

Mr Wettlaufer: I would like to see 100% satisfied, but I would also like to see any improvement in what is presently being satisfied. I feel that 25% is totally unacceptable. It is also immoral. That is one of the things this legislation is designed to enact, is some improvement.

Also, I think the \$10,000 limit and the six-month limitation period will go a long way to satisfying that. Any time you urge someone to speed up the complaint process, it will also assist in the settlement process because we then rely more on recent memory and facts than distant memory and what could be misleading.

I also question why the unions seem to be so upset with this legislation. Would you not feel that if the unions can demonstrate that they are helping the workers more, it would assist in their recruiting drives?

Mr Filo: Have I stopped beating my wife? Is that the question?

Mr Wettlaufer: No. I didn't use that analogy.

Mr Filo: Look, unions help their members considerably. We don't need any sort of construct to show to our members that we work for them. It happens every day. If you sat in my office for a couple of days, you'd see the breadth and scope of the help we offer our union members. The big problem is that many union members who have never had any difficulties, who have never accessed the union, are simply unaware of what can be done for them. But those who have know we work for them, and we've never had any problem in our recruitment drives in the area in which I've worked.

Mr Wettlaufer: That's interesting, because Mr Samuelson from the Ontario Federation of Labour told me outside this morning that it would assist the unions in their recruiting drives.

Mr Filo: It would assist them in what?

Mr Wettlaufer: This legislation could assist them because of the influence that the unions could demonstrate they possess.

Mr Filo: It sounds like a comment taken out of context to me.

The Chair: Thank you, Mr Filo. We appreciate the time you took to prepare and make your presentation before us here today.

Mr Filo: Thanks very much, and I wish you good luck in your deliberations.

The Chair: That concludes the presentations scheduled for Sudbury. The committee stands recessed until 9 o'clock in Ottawa tomorrow.

The committee adjourned at 1627.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Président: Mr Steve Gilchrist (Scarborough East / -Est PC)

Vice-Chair / Vice-Président: Mrs Barbara Fisher (Bruce PC)

*Mr John R. Baird (Nepean PC)

Mr Jack Carroll (Chatham-Kent PC)

*Mr David Christopherson (Hamilton Centre / -Centre ND)

*Mr Ted Chudleigh (Halton North / -Nord PC)

Ms Marilyn Churley (Riverdale ND)

Mr Dwight Duncan (Windsor-Walkerville L)

Mrs Barbara Fisher (Bruce PC)

*Mr Steve Gilchrist (Scarborough East / -Est PC)

*Mr Pat Hoy (Essex-Kent L)

*Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L)

Mr Bart Maves (Niagara Falls PC)

*Mr Bill Murdoch (Grey-Owen Sound PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Toby Barrett (Norfolk PC) for Mr Ouellette

Mr Gary Fox (Prince Edward-Lennox-South Hastings / Prince Edward-Lennox-Hastings-Sud PC) for Mr Maves

Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
for Mr Tascona

Mr Bert Johnson (Perth PC) for Mr Carroll

Mr Wayne Wettlaufer (Kitchener PC) for Mrs Fisher

Also taking part / Autres participants et participantes:

Ms Shelley Martel (Sudbury East / -Est ND)

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Avrum Fenson, research officer, Legislative Research Service

CONTENTS

Wednesday 28 August 1996

Employment Standards Improvement Act, 1996, Bill 49, Mrs Witmer / Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, M^{me} Witmer	R-1217
United Steelworkers of America, Local 6600	R-1217
Mr Denis Dallaire	
Mr Robert McKay	
United Steelworkers of America, Local 6500	R-1221
Mr Barry Tooley	
Sudbury and District Chamber of Commerce	R-1226
Mr Bernie Freelandt	
Canadian Auto Workers, Local 103	R-1230
Mr Brian Stevens	
Sudbury Area Taxi Owners Association	R-1234
Mr Kenneth Flinn	
Sudbury Women's Centre	R-1238
Ms Donna Mayer	
Sudbury and District Hotel and Motel Association	R-1242
Mr Richard Clement	
Sudbury and District Labour Council	R-1246
Mr John Filo	

20 081
XC 13
526

Government
Publications



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R-28

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**Journal
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Jeudi 29 août 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



Chair: Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Thursday 29 August 1996

Jeudi 29 août 1996

*The committee met at 0903 in the Delta Hotel, Ottawa.*EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): If I can call the meeting to order on this our ninth day of hearings on Bill 49, An Act to improve the Employment Standards Act. We're pleased to be in Ottawa today. On behalf of the committee, I would say we look forward to all the presentations. We appreciate the interest these groups have shown on the bill.

OTTAWA-CARLETON BOARD OF TRADE

The Chair: Our first group this morning is the Ottawa-Carleton Board of Trade. I wonder if they could come forward and join us here, please. Just a reminder, we have 15 minutes for you to divide as you see fit between presentation time or questions and answers.

Mr Willy Bagnell: Good morning. I'd like to remind you all that there are Rough Rider season tickets on sale, and if you'd like to buy some, I happen to have some in my wallet.

Mr Bernard Grandmaitre (Ottawa East): Good luck.

Mr Bagnell: The Ottawa-Carleton Board of Trade is the oldest and largest business organization in Ottawa-Carleton, representing over 1,400 business people. As the metropolitan Ottawa chamber of commerce, we have long pursued the goal of improving our community and our governments. Like most businesses, we operate without any government funding for our operations, thus relying on our membership and our collective entrepreneurial skills to thrive.

Bill 49 represents a quantum step forward for Ontario employers and employees. With this in mind, the Ottawa-Carleton Board of Trade is generally supportive of the legislation.

The cleanup of the problems relevant to duplicate claims in multiple forums is just one concrete example of how this legislation pursues a more balanced approach. The tightening of the entitlement to recover money from an employer to six months from two years creates a more decisive approach for the employee, while allowing a reasonable time for the employer to wait. The approach prior to this was very one-sided for the employee and very costly for the government and the employer, particularly in terms of defending the employer's decision.

There are, however, some points within the legislation which in our opinion require further thought and, we believe, some revision.

As presently written, the bill has the potential to give arbitrators the same powers to investigate, demand documents for perusal and interview persons relevant to the inspection as the employment standards officers. It is inappropriate for the arbitrator to take on these roles. These tasks of arbitration should only occur after various steps of the grievance process. We also feel that there needs to be a clear delineation of an appeal process on an arbitration hearing enforcing the act. The proposed legislation leaves the door open for many interpretations but does not spell out clearly an appeal process for arbitration decisions.

Finally, we must determine whether Bill 75 or the respective collective agreement will prevail in terms of specific time lines. Almost every collective agreement in Ontario dictates specific time lines for grievances to be filed and processed. In some cases, these will differ substantially from the proposed legislation. The board of trade believes that the time lines within the collective agreement should prevail. This will provide consistency for all parties, including the government of Ontario.

The board of trade is very happy to see the progress of the government in re-establishing a more balanced approach to employment standards in our province and hopefully this will create the economic climate we wish to see in Ontario. Thank you very much.

The Chair: Thank you. That allows us about three and a half minutes per caucus for questioning. We'll commence as always with the official opposition, Mr Hoy.

Mr Pat Hoy (Essex-Kent): Good morning. We're pleased to be here in Ottawa this morning to hear your concerns and the concerns of everyone who will be here today.

Your comments around the arbitration are well noted. Both business and labour have requested more definition of what the government is proposing as far as the arbitrator's role is concerned, his powers of investigation and so on, so we do note that.

As you probably know, the minister is thinking of a further review of labour legislation, and quite frankly we believe this should have been done all at once rather than having us hearing from persons like yourself now and then going through another review as it pertains to labour legislation some time this fall. We really believe it would have been better to package all the amendments that the minister was considering and we would have had a better grasp of what the government was intending to do. But your concern about the role of arbitrators is well noted.

The other point that you make is the six-month recovery for employees and the reduction from two years. You state that it's one-sided for the employee. We've had a number of people state that they find it an uncomfortable position to open up a claim while in the employ of their current employer. Ninety per cent of the people open their claims after they've left their jobs because they're uncomfortable to do it while they're there. They're fearful of reprisals. I just wonder if you have any comment in that regard.

Mr Bagnell: No, and having worked for both small and large businesses in my time, a company that has 500 employees spread all across this province in the publishing industry to the chain of local video stores that I once was a partner in, and in the larger company having had complaints levied against us by employees who were presently in our employ, I have not found that to be an issue. I think a lot depends on the corporate culture that has existed, and if you deal in a fair and honest fashion, which I found that most of my colleagues in business do, then it shouldn't be an issue.

Mr Hoy: We recognize that most employers and their relationship with their employees are very good. However, we're concerned about those very few, and I emphasize the very few, who come into conflict with their employees. But we appreciate your comments.

0910

Mr David Christopherson (Hamilton Centre): Thank you for your presentation. I wanted to ask if, in your opinion, you believe that any of the minimum standards that are now established under the Employment Standards Act are being diminished or reduced or watered down in any way in terms of the protection they provide to workers.

Mr Bagnell: Could you be a little more specific on what standards you're referring to? This is a very large piece of legislation.

Mr Christopherson: Actually it's not. It's a relatively small piece of legislation.

The Chair: Oh.

Mr John R. Baird (Nepean): Oh?

Mr Christopherson: In terms of the words and the length of the bill. We're going to play games, eh?

Mr Bagnell: No, no. I just —

Mr Christopherson: No, I didn't mean you. I meant them. Don't worry about it.

I'm referring to the fact that the minister has stated that the amendments contained in Bill 49 do not reduce any of the standards of protection that are provided in the current Employment Standards Act. I wondered if you agreed with that.

Mr Bagnell: To be quite honest with you, Mr Christopherson, it is not something that the Ottawa-Carleton Board of Trade has focused on. We are very pleased with the general thrust of the act. We think it brings more balance to the province. I can tell you in all honesty that with the surveys we have done of our 1,400 members, which do include some representatives of public institutions which are very unionized, they were strongly in support of a more balanced approach to employment standards. We haven't had any feedback about standards reduction.

Mr Christopherson: I guess that's why I'm raising the question, because there are two perspectives of course.

Mr Bagnell: Absolutely.

Mr Christopherson: The people who represent the workers will come in and offer one perspective; those who represent business will offer another.

Mr Bagnell: I would just caution you when you use the term "people who represent the workers." Remember that 80% of the workers in the province of Ontario are non-unionized and remember that there has to be some one to speak for them.

Mr Christopherson: That's the whole point of this, sir. The Employment Standards Act is the only piece of legislation that speaks for them, because you will acknowledge there are some bad bosses and the whole idea of this legislation is to provide a minimum level of standards and protection for workers, particularly the most vulnerable, who are those who don't have a collective agreement, who are just barely paid above minimum wage, with few or no benefits. We are contending that this bill, as much as you may claim that it rebalances in some way — the fact of the matter is that after Bill 49 becomes law, there will be fewer rights and protections and enforcement ability of those rights in the Employment Standards Act than now exist.

Mr Bagnell: I think we must also remember in a democratic society, specifically in the province of Ontario, that legislation, on balance, for the last 40 years has been crafted to serve the needs of the vast majority of citizens of the province. I appreciate your position as a representative of the former government, but I can also appreciate the fact that the vast majority of Ontarians work for the private sector. There are claims, and that's why we have governments to adjudicate them, but on balance the philosophy of most boards of trade and chambers of commerce in our province has been to let the free market reign, have government create a broad infrastructure program, broad policies, and then get the hell out of the way so we can do business, create more jobs, more economic wealth and improve our province's communities.

Mr Baird: Thank you very much, Mr Bagnell, for your presentation this morning.

Mr Bagnell: That's Wally Bagnell, Mr Baird.

Mr Baird: Thank you. I want to get your thoughts on this. What do you think would be a disincentive for those who would accept Mr Hoy's notion that the vast majority of businesses accept their responsibilities under the act? What we're dealing with are a very problematic few that we want to hone in our attention to. Do you think that is the system right now with the Employment Standards Act — a system where once an employee makes a complaint, once that complaint is investigated, once the order to pay is issued, only 25 cents on the dollar is being paid. So you have a 75% chance of disregarding the law and not paying. Is that an incentive or a disincentive for those in immoral businesses to flout the law and flout workers' rights?

Mr Bagnell: I'll preface my response with this: I think the vast majority of businesses obey the law, and when you get an order from the government you obey it. I have

some personal experience in this matter. When a local company — and my wife lodged a complaint about it — refused to pay, I had to go and have a little conversation with the owner and a talk about ethics and morals of business.

The fact is that perhaps the government of Ontario should look at those situations and be more stringent and perhaps privatize the collection process so that there could be more of those claims fully recovered and paid to the employees.

Mr Baird: And you think for those employers who don't accept their responsibilities under the act, would they more likely or less likely to pay if they saw that people were being forced to pay certainly a much better rate than 25%?

Mr Bagnell: Absolutely. No question about it. By example, if the business community, through their organizations, mostly chambers of commerce in the province, get the word out that the government is not cooling around and they're going to insist that these bills be paid, then they will be more than likely to comply in a far greater percentage than they are presently, which obviously is good for our communities and good for our province.

The Chair: Thank you, Mr Bagnell. I appreciate you taking the time to come before us here this morning.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93

The Chair: That now leads us to our second presentation, the United Brotherhood of Carpenters, Local 93. Good morning. Welcome to the committee.

Mr Sean McKenny: Good morning. My name is Sean McKenny. I'm the director of training and programs for the United Brotherhood of Carpenters and Joiners, Local 93 here in Ottawa. Our organization has been in Ottawa since December 1904. I'd like to thank the committee for the opportunity to appear this morning.

I've pored over a number of documents related to the issue and the reason that all of you are on tour of the province, that issue being the Employment Standards Act, is an act that was to be, and perhaps still is, designed to provide a bare minimum to those individuals who, for one reason or another, are faced with accepting those standards. Women, men, teenagers, seniors, all working in settings with those minimum employment standards, that's all they have. And for some, those legally required minimum standards are not even applied.

At a time in our society when there is such a high level of uncertainty surrounding the future as it pertains to our very existence, the steps that are taken by those with decision-making powers become paramount to establishing a society, whether that be at an international, national, provincial or local level, that will truly be prosperous.

I'm not going to make reference to other countries and statistics that have been compiled as it relates to employment standards. Others appearing before you have done that. I'm not going to make reference to past history and point out injustices as they pertain to employment and established standards that created havoc in our com-

munity at that time. Others before you have and will do that. I'm not going to make reference to papers, to articles, books or what have you that were written or compiled by schooled individuals whose knowledge on these issues is respected by all. Others have and will be doing that. But what I will do is make reference to real life and real goings-on.

Some of you may wonder why the United Brotherhood of Carpenters, a building trades union, is even involved with this process. After all, for all intents and purposes, the Employment Standards Act does not, to any substantial degree, have any direct impact on us. However, our general president noted, in a speech given at our last general convention, that the United Brotherhood of Carpenters and Joiners would not solely speak for its members, but that the United Brotherhood of Carpenters and Joiners, when speaking, would also be the voice of those women and men in our trade who are not members, who are not organized. They do not have the benefit of an agreed-upon collective agreement, but rely solely on employment standards.

As a carpenter myself, one who went through an apprenticeship program and one who, at certain times in the past, had to work in an unorganized environment and rely on the Employment Standards Act, I've seen first hand the weakness of the act. To report for work at 7:00 am and be told that material for the project was on its way and be told that you had to stick around and help unload the material from the truck — even though there was no immediate work, you had to stick around. The truck arrives at 2 in the afternoon and your boss explains, when you go in to inquire about the missing six and half hours on your pay, that he's not about to pay you for hanging around doing nothing, you complain to who? Apply what legal recourse to the issue? Complain to anyone and you can be assured that you will not be employed by that company. Anyone here who thinks these situations do not occur is naïve at best. Anyone here who thinks the Employment Standards Act protects individuals in situations like this is naïve and then some.

0920

I noticed on the provincial legislative page on the Internet that Bill 49 was referred to as the Employment Standards Improvement Act, 1996. I've got to say, excuse me? What does it improve upon? In all fairness, perhaps one of the very few improvements is the section of the bill pertaining to seniority and service during pregnancy and parental leave. The section on vacation and entitlement to vacation pay we also believe is somewhat of an improvement. However, the bill for the most part will do nothing to improve upon already existing standards. That the Employment Standards Act needs to be improved upon is a given. Bill 49 just don't cut it.

Some of the business community that you've heard and will hear will try to have you believe that they don't necessarily agree with the bill either. Oh, they love the terms "power" and "control," but they'll argue that it doesn't go far enough with respect to privatization and that more power or control be put in the hands of industry. But industry in our unorganized sector is the business community. They know full well that the unorganized are

just that: unorganized; no voice; no complete and concise understanding of their rights under any employment legislation. This bill is just what business was hoping for; just what labour expected.

I look at you all as committee members, and can't help but realize that in all probability these hearings on Bill 49 are no more than smoke and mirrors and that the government is only trying to appease us, in that what will be, will be; also the realization that the minister is caught in a bit of a quandary with respect to the bill. Her recent backing off on some of those areas that would have had a major negative impact on the unionized is puzzling.

I've been around the block more than once. Labour's position and feelings towards this government are certainly no secret. I think labour realized the government's feelings towards them. I would put to the committee this: I listened to someone give a speech in Vancouver a couple of weeks back. Actually, he's someone that everybody in this room knows. Some like him; some don't. Regardless, he said: "Before you judge, before you make decisions that may have an impact, whether that be a small impact or a larger one, try putting on the shoes of those whom that impact will affect. Wear them for a while. Try to get a feel. Then, and only then, make your decision."

So I ask each of you, take away your job, take away your education, take away your material possessions — God forbid that any of that happen — and wear the shoes of those who rely on the Employment Standards Act and who now may face changes vis-à-vis Bill 49. Envision your children in the same situation. Then and only then make your recommendations from these hearings.

At the onset of my presentation, my speech, what have you, I noted the power and decision of decision-makers; the importance of those decisions because they affect everyone: ourselves, our children, our children's children. The realization that a collective approach to any decision-making process is a must in having the correct decisions being made. That the business community, the labour community and governments work together towards establishing common goals for the good of the people is a must. That the business community continue to look after its own interests, with little or no regard for labour, has to become a thing of the past. That labour make attempts to understand certain positions of business must become a thing of the future, that governments realize the tremendous contribution that can be brought on by these initiatives must become a thing of the present.

I respectfully would request that this standing committee bring back to the minister as one of its recommendations the possibility of a subcommittee being struck comprising representatives from business, labour and government to deal with the Employment Standards Act changes that are to be made. That's all I have to say. I want to thank the committee and I have to apologize. I got a phone call yesterday from, I believe his name was Victor, asking me to switch the times from 3:15 today to 9:15. I did that. I have to go and I can't stick around for questions. I'd love to be able to entertain them, but I have to go, and I thank you all for allowing us here to make a presentation.

The Chair: Thank you very much, Mr McKenny.

NEPEAN CHAMBER OF COMMERCE

The Chair: That then leads us to our third presentation today, the Nepean Chamber of Commerce. Good morning and welcome to the committee.

Mr Robert Wilson: Thank you for the opportunity to appear. My name is Bob Wilson and I represent the Nepean Chamber of Commerce as its chair, and with me is Buck Arnold, our president and CEO.

We represent the interests of over 400 businesses. We are the second most senior business organization in the region and we have representation of over 12,000 people. You have the brief that we have given to the clerk of the committee and I'm going to only highlight some of the points. It's sort of divided into two areas. It deals with our current concerns, as in Bill 49 that is there. Then there is a section on consideration for real reform in the act in phase 2, which I understand is yet to come and hopefully will.

We applaud the efforts of the government to streamline everything in this area. The less government there is in business, the much better things go. In the sections that deal with the claims, procedures and appeals under the act, the proposed changes make sense. The increase in time to file appeals permits meaningful negotiation to take place. It's just a commonsense change we think.

Minimum and maximum claims: The limits on an order for an employment standards officer is good. Currently, we don't see that there is any limit. The settlement procedures provided for prior to investigation may streamline procedures, but we believe however, and it's been said prior to our presentation, that similar restraint should be placed on arbitrators. They should not be permitted to determine all employment standards issues. That's the feeling of our business people.

Prohibition of parallel proceedings in court and under the act: Currently, a non-unionized employee can do both or either, but no employer should be subject to double jeopardy. Unions and their members still have the protection of their collective agreement to do other things, but we support this change.

We support the process of privatizing the collections. It's similar to a court action, the same sort of things.

The use of the grievance procedure to incorporate the act as part of the collective agreement for unionized employees: It's sensible. But a caution, and again it was said by someone previous to this: Collective agreements contain time lines so they're going to have to be melded; there's no question.

Pregnancy and parental leave: We're going to deal with that under our considerations for real reform, because ultimately the purpose of any reform is not to make Ontario an employer's paradise or an employee's hell, but to balance the rights of employees and employers. We're not putting these recommendations to set out definitive answers, but just to raise some concerns that we still have for some substantive changes to the act.

Anecdotal evidence, and we don't have any factual evidence, suggests that many employers minimize the number of employees by contracting out work, and it's not because of wages often; it's because of the number of rights they have to do under this. The following provision

in particular are relevant to what we should say: pregnancy and parental leave. I want to emphasize that we support the concept; there's no question of that. But the Nepean Chamber of Commerce also believes that for a small business the provision for up to 35 weeks puts a small business employer west of the rock and east of the hard place; there's just no question. We don't know what the answer is, but currently the person doesn't have to say anything about whether they're coming back. That lets a small business not replace with a full-time person, because the other person has a right to get back. Combine that with the rights that that person, if they have — you know, the entitlement time under the Employment Insurance Act. A woman can currently get up to 25 weeks of pay that way. We're not saying that's wrong, but something has to be done to ameliorate it. We recognize the political minefield it is, no question.

1993

In termination of employment, the sliding scale that is given is in most circumstances substantially higher when governed by the courts than prescribed by the act, so we say there's so much uncertainty there that the act must be amended to improve the minimum level of benefits and exclude the jurisdiction of the court towards a higher level of benefits, except if it's covered under a collective agreement.

In severance pay, you all know the current provisions on that one. But there's little justification for penalizing large business employers when they are forced by economic circumstances to downsize. Indeed, provisions such as this adversely impact a decision by employers to increase their workforce on upswings in the economy, because they cannot reduce their workforce on downswings. There's a lot of manifestations. We say there that the government in the second phase of revisions to the act should examine the provisions of this act to ameliorate the impact of severance pay amounts. We're not saying do away with severance pay. There has to be a balance somewhere.

We thank the committee for the opportunity to present our views.

The Chair: Thank you very much. That leaves us two and a half minutes per caucus; this time we'll commence with the third party.

Mr Christopherson: A rather startling presentation. I don't think we've had quite as hard-line a position as this in terms of employer demands in any community we've been in across Ontario. I'm really quite thrown. I had a few other things I was going to talk to you about, but as I listened to some of your improvements you wanted to make, you really left me reeling.

You say, for instance, when you talk about severance pay, that there's an obligation imposed on an employer who has 50 or more employees and characterize that as "penalizing" them. It was always my understanding that the right was there for those employees and it was only an exemption for those of 50 or less because it possibly could be too onerous. Whether we agree or not, that would be the argument. You're flipping that over and suggesting that somehow the larger employers are being penalized and that we ought to race to the bottom in terms of that standard.

Mr Wilson: I'd like to make a couple of points. I don't think these are demands; they were suggestions and considerations to look at. We've never said to do away with the severance pay. The second point I'd like to make, Mr Christopherson, is that we're not saying do away with severance pay, but in fact it is a disincentive for workforce adjustments that have to take place. If people are going to have to give out this money — and we're not saying there shouldn't be some form of severance pay; that's not what we're saying — there has to be a balance such that they're going to increase their workforce again. If we're going to create jobs in this province, if we're going to increase the total employment pool, we can't negatively impact on business in any way.

Do there have to be minimum standards? Of course there do. Does there have to be severance pay? Of course there does. But maybe there's a way it can be balanced. We don't have the answer, but if you want to create more full-time jobs instead of the contracting out all the time, then you're going to have to make it easier for business to do things.

Mr Christopherson: I'm sorry, did you say that the severance — you really are throwing me. This is an incredible presentation, it truly is.

Mr Wilson: Thank you.

Mr Christopherson: I'll be reflecting on the Hansard on this carefully. Did you actually say that the severance language that exists now is a disincentive to make adjustments? What does that mean exactly, "a disincentive to make adjustments"? They might not be so quick to lay people off?

Mr Wilson: No. I'm saying that if they have to pay the severance pay — and we've all been through the economic downturn in this province; it's been brought to us by other governments. The point is, if you have to pay this off, they're not going to hire these people back again. We're not saying they shouldn't pay them severance pay, but if I'm an employer of over 50 and I have to pay up to 26 weeks severance pay to 15 of my employees, then perhaps I'm not going to hire them back again. I'm going to contract work out if I can. I would like to be able to hire them back again, but if I have to pay out all that money in terms of that and in terms of economic downturns, it's not easy.

Mr Christopherson: I'm just asking you at some point to give some thought to what it's like at the other end of that whole process, really give that some thought about what happens to those individuals and their lives — not just a benefit, as you're seeing it, from those who already will still have a job after that layoff takes place.

Mr Baird: Thank you, Mr Arnold and Mr Wilson, for your presentation today. You're probably the only chair of a chamber of commerce in the province of Ontario who has done exactly what Mr Christopherson has suggested. I believe you were a former trade union president, which is before I first met you.

I wanted to get your thoughts. You've mentioned an issue that came up yesterday in Sudbury: the frequent lack of clarity in the Employment Standards Act, and sometimes outdated provisions, superfluous provisions, hard-to-understand provisions, leading to companies simply trying to contract out services. We saw a study

released last week in Toronto that said one of five workers is a home-based worker, with a growing number of consultants in communities across the province. People are opting out with their feet and simply aren't hiring anyone; rather, they're contracting out the services they require in order to get around huge payroll taxes and huge regulations.

We talked to one businessperson in Hamilton who was from, I believe, the Niagara Peninsula, who said, "I don't care so much what you do to regulate me, but for God's sake, just tell me what you want me to do and I'll do it." Now, I suspect he does care how he's regulated, but he expressed a terrific amount of concern.

Can you tell me what sort of effect you think these regulations have had on people making the decision not to expand or hire that extra job, but rather simply to contract out?

Mr Wilson: Anecdotal? I have no hard facts. I contract out rather than hire, personally. I am a very small business, but I contract out rather than hire. I would love to expand, but the regulations will regulate you to death at this point in time, so I'll contract out. I know of other people who are contracting out, simply on their say-so; I don't have any hard evidence I can give you. They're contracting out because they won't commit to hiring. I think part of it is due to the economic times, but I think part of it is due also to regulations that govern these people.

Mr Baird: How much of a problem have you experienced in your members, either of you, with interpretation of the regulations? This act was originally written in 1974 and there hasn't been a comprehensive review. Our previous speaker suggested it would be a good idea to bring business, government and labour together, which is something we've obviously started for our comprehensive phase 2 review. What are your thoughts on that?

Mr Buck Arnold: As a general comment, I would say that over the years comments have not centred on a specific act. The general feeling out in the business community is very definitely that we are overgoverned, overlegislated, and whatever can be done to remove obstacles to doing business should be done. It's a broader picture than this act or any other specific act.

Mr Grandmaître: Let's address the pregnancy and the parental leave. You say it's detrimental to small business people, that the 35 weeks without pay does affect a small businessman, and you gave us a good example. You say you support the concept but that real reform is necessary. Now, I'm giving you a contract: You're going to rewrite that section. How will it read?

Mr Wilson: I said I don't have the answer to that. We are faced with a real conundrum. I firmly believe — I fought too long to establish pregnancy and parental leave rights in contracts, but at the same time, now that I'm in a small business, if I hire someone — I don't know what the answer is. Maybe there's a question of some kind of self-funded leave, this sort of thing. I did negotiate one of the first self-funded leave plans in the province for teachers. Maybe there is an answer, that business can contribute. Maybe it can be combined with some kind of RRSP provision, and you'd have to work with the feds on this, for income tax rebates, this sort of thing, or considerations.

It's the same thing with severance pay. I think there's a question of funding some kinds of economic downturns, both on the point of a company and an employee.

It's not an easy question, but if you want young people to have jobs and especially young women to be able to get ahead, which I think is very important, then you have to make it somehow easier for an employer to replace this person. Currently, that person doesn't have to give any notice of whether she or he is coming back — a male is only entitled to up to 10 weeks of it.

But there has to be a solution looked at, and perhaps there are wiser heads than mine around. But it's there. I've talked to small business people, and they find it a very difficult piece of the act to work around.

0940

Mr Grandmaître: You mentioned that the federal government plays a major role when they establish this kind of provision. Do you think the federal government would be willing and ready to negotiate that type of clause with other provinces at the present time?

Mr Wilson: I wouldn't dare speak on behalf of the federal government and its attitude to the provinces today. I think it is a situation that you people, the government of Ontario, are going to have to pursue with the federal government. If they won't negotiate it, then bring some kind of pressure to bear on them; throw the ball back to those people.

Mr Grandmaître: Have you pressured the federal government on this issue?

Mr Wilson: I have not, no.

The Chair: Thank you, gentlemen, for taking the time to appear before us today. We appreciate it.

RENFREW COUNTY LEGAL CLINIC

The Chair: That leads us to the Renfrew County Legal Clinic. Good morning, and welcome to the committee. We have 15 minutes for you to divide as you see fit between either presentation time or question-and-answer period.

Mr Richard Owen: Thank you. My name is Richard Owen. I am here on behalf of the Renfrew County Legal Clinic. We are a legal-aid-plan-funded clinic, privately incorporated, as all the legal clinics are, and we provide services in what is commonly called "poverty law." Primarily, we help people with social assistance appeals, workers' compensation, Canada pension plan, unemployment insurance, as well as landlord and tenant. We find ourselves expanding our services to some extent to try to fill the gap which has been created by the lack of legal aid certificates.

In the process, we of course have many clients who are either unemployed or having various difficulties and we see a large number of people who are marginally employable, either because of disability or because of their income or because of the lack of opportunities in the county.

I am here not to speak about unionized employees at all. There are plenty of people here who will come to talk to you about those concerns. I am trying to address our reaction to the amendments which relate to the unionized employee. The Employment Standards Act is

the sole line of defence for the non-unionized employee and it is that they depend on.

There are certainly many minor amendments which are improvements, as the act calls itself, and which can be characterized as housekeeping, but there are other provisions which, in our view, certainly can have a very negative effect on non-unionized employees.

It's important to think about enforcing employment standards in the real world. As the member mentioned, it's been found that 90%, I believe was the figure, of complaints are brought by employees after they have left their employment. This means there's a period of time in which the abuse, if there is one, continues. The primary concern here is with the limitations which are being enacted in this act. You cannot, in the economic situation which exists at this point, provincially and perhaps globally, take chances with your employment, even if it's substandard. We see this over and over again. People do not raise their complaint while they are working.

This has to be the basic thing we look at before we look at the act; this is the context in which the enforcement of the act or the laying of complaints has to be looked at.

It's all very well to say there are provisions that you mustn't fire someone for laying a complaint, but we all know that the process is lengthy, often ineffective, and it doesn't result in reinstatement. There are areas in Renfrew county where there's basically one employer in a region. You don't have a choice. You can either take a job there, keep it or move, and I'm not sure where you would go right now.

The idea of a minimum and a maximum basically is providing a gift to an abusive employer. If you have a maximum of \$10,000 you can collect through employment standards and you have a \$40,000 claim — and we have to assume this is a valid claim because that's the point — then there's a \$30,000 gift to the employer. If you have a six-month limitation period and the abuse has continued over two years, you have an 18-month gift to the employer. If you have a minimum, you can have an employer who basically nickels and dimes his employees and may never be touched. These provisions end up being unfair to the employees, for whom these amounts of money are very important, and they benefit or encourage the employer who has decided to be abusive.

The choice between the employment standards branch and civil suit: I think it's unfair that you have two weeks to make a choice, if you've brought a complaint to the employment standards branch, to change your mind, and you have no time at all if you've decided to sue. But I don't think this is a central issue. For a great many employees in the situation they are in, which is usually without very much money, they're not really in a situation to bring a civil suit in any case. Legal aid is not available for civil suits; there simply are no certificates available under the legal aid plan to bring a civil suit. So the person who is poor is somehow going to have to finance a lawsuit.

In Ontario, lawyers are prohibited from taking lawsuits on a contingency basis. They are not allowed to say: 'We'll get to the end. I'll take 15% or 20% if we win and I'll take nothing if we lose.' That's not allowed. The

reality is that even if it were allowed, lawyers always have to take into consideration whether they're going to go broke on the case or not.

So the lawsuit is not a practical means of enforcement for most employees, who often, when they've left the job, have left it out of desperation and may well be unemployed at the time they're making their complaint. This adds to the unfairness of a \$10,000 limit, because the option, really, of going to court is rarely there.

The other aspect of the whole situation as it exists presently and as I believe is reinforced by the amendments is that the system is geared towards settlement. Settlement means compromise of a claim which presumably is a valid one. Now, you can say that at the employment standards complaint level, when you go to the employment standards officer, there may be a settlement because there is really an issue of liability: Is the employer really liable? Once you get to the collections stage, it's already been determined that the employer has abused the standard and owes money to the employee, yet we see a structure which encourages more settlement rather than less, more compromise rather than less. The plan is to give the collection process to a collector who is specifically authorized to settle, with consent, but to try to put together a collection settlement, and he's entitled right now to settle up to 75%; in other words, 25% less than the full amount.

It's important to note that the provision says that that amount, the 75%, for which you don't need the director's approval, can be changed by regulation. That means that some time down the line the government can change that provision from 75% to, say, 50% or 25% without any public hearings, without any fanfare. Basically, you've put the whole thing in the hands of the collector to make the deal and to put a certain amount of practical pressure, if none other, on the employee to settle for less than his full claim.

Add to that the provision that if the collector collects less than the full claim, there's an apportionment. In effect, that means the collector's fee is going to be paid, at least in part, out of the amount being collected for the employee, so the employee gets even less. If we look at the alternative of going to court, the only practical thing you do when you go to court is settle before you go to trial. Going to trial is too expensive for most of us, so the answer is to settle, settle for less than the full amount, whether your claim is valid or not.

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If you have a pattern which encourages settling for less, you have a system that rewards the abusive employer. He says: 'I'm not going to have to pay as much and I'm not going to have to pay for quite some time, and of course a great number of people are just not going to be able to get there. So I'm rewarded, in effect, for my abusive behaviour.'

Add to that the current situation. You have provision in the act for prosecution and conviction for breach of standards, but this provision's not used. My information is that for the first instance of breach of the standards, as opposed to breach of an order, those charges are not being laid except in situations of the more-than-50-employees layoff, those kinds of large situations, and then

the charges are dropped as part of a comprehensive settlement. So again there are no sanctions for breaching employment standards. In effect, there's a provision in the act but the enforcement isn't there. I can assume that this is because employment standards officers don't have the time or don't have the resources to carry through on these things.

So you have these two problems. First of all, practically, an employee will not make his complaint before he goes away from the job. Second, you have a system which puts off and reduces the amount which an employer has to pay.

I should note — just as a footnote, really, because it's a minor point, but it is to me a problem with the act — that there are provisions in the act as it's amended that if there is an order made by an employment standards officer and it turns out that there is fraud or lack of consent, there is a review process, there is an appeal process. While the act says that a collector's settlement is not binding if it is arrived at by fraud or lack of consent, there is no provision in the act, no remedy in the act, for an appeal process or a way of having that corrected. In that situation, if you are an employee and you enter into a settlement with an employer through a collector, except you didn't or there was fraud or there was lack of consent, you're going to have to go to court to sue, because there's no provision in the act, there's no parallel provision. That may have been an oversight but it's something that should be looked at. Subsection 65.1(2) is the remedy for the employee if there's an employment standards officer's order, and the review is in 67(2.1). In section 3 it states that the collector's agreement is binding unless there's fraud or lack of consent, but there's no carryover to deal with the problem of remedying the failure of the collector's consent.

While I understand that the provision allowing unions to negotiate out employment standards if there's supposedly a better overall deal has been dropped for now, I think it should be remembered that employment standards in general — there may be some debate over some minor points — are not really an undue burden on employers. They're a basic minimum which differentiates us, I think, from Third World countries and that we need to preserve. The way we preserve them will be by enforcing them.

The Harris government has made provision to improve enforcement of family law support orders. They're going after deadbeat dads. But they don't, it seems, have the same commitment towards deadbeat employers.

It is, it seems to me, a fundamental role of government that where there is a very important relationship in a society, whether it be husband-wife-child or whether it be employer-employee, if there's inequality of bargaining power it's important for the government to provide that basic even playing field, to try to even equality. It's also important to remember that there are many, many employers, as has been pointed out here this morning, who do fulfil employment standards and who, I am sure, want to have good relations with their employees, want to work with their employees in a kind of partnership, as opposed to ruling through fear. If you don't maintain standards that are supposed to be there, you're rewarding the deadbeat employers and you're punishing the ones

who are perhaps spending a little more to do the job properly and to try to be fair. Thank you.

The Chair: Thank you very much. I didn't want to cut you off, but we've actually gone a few seconds over our 15 minutes.

Mr Owen: Oh, I'm sorry.

The Chair: No, that's fine. We appreciate your presentation and the time you took to prepare it. Thank you very much.

PUBLIC SERVICE ALLIANCE OF CANADA

The Chair: The next group up will be the Public Service Alliance of Canada. Good morning, and welcome to the committee.

Mr Peter Cormier: Good morning. My name is Peter Cormier. I'm the national director for the national capital region. With me is Mike MacDonald, the assistant to the president of our union.

On behalf of the 60,000 members of the Public Service Alliance of Canada who live and work in Ontario, I should like to thank the committee for inviting my participation in your review of Bill 49, An Act to improve the Employment Standards Act.

When tabling the legislation and elsewhere, the Labour minister has claimed that the Bill 49 amendments to the Employment Standards Act are essentially housekeeping. We beg to differ. In our opinion the amendments are substantial, because in a great many cases they will reduce the entitlement of workers or the ability of individual workers to collect the amounts that are owing.

At the outset, I should like to say that while the majority of our members who live in Ontario are covered by the federal public service terms and conditions of employment regulations, we are deeply concerned about the direction the current Ontario government is taking.

First, the proposed Bill 49 amendments will directly affect our members who are certified in Ontario. Second, the federal government's recently proposed alternative service delivery program will inevitably result in a transfer of many federal workers from coverage under the public service terms and conditions of employment to the Ontario Employment Standards Act. Third, changes at one level of government tend to influence the future direction of legislation changes at another level.

Before canvassing the specific amendments to the Employment Standards Act that have been proposed by the government, I should like to say a few words about the importance of employment standards to the economy. It needs to be underscored at the outset that employment standards legislation in Ontario and elsewhere was introduced to ensure that all workers receive basic benefits related to overtime, vacation, severance and public holidays, and that hours of work are regulated. It is not just individual workers who benefit from employment standards legislation; society benefits because the minimum standards mandated by law reduce poverty and exploitation, and because minimum standards impose an obligation on all employers. As a result, while companies can and do provide greater benefits than those that are mandated under employment standards legislation, it should be impossible for a company to reduce its labour

costs below the floor level. In our opinion, this minimum standards system helps to ensure an effective use of labour to the benefit of individual workers, companies and society.

It needs to be underscored as well that the existing employment standards in Ontario and in most other jurisdictions are exceedingly modest. That said, they are in a very real sense the only protection that most vulnerable workers in our society receive. In short, employment standards legislation ensures that workers, particularly those on the margins of the labour force, will receive a measure of fairness and the assurance that the state will help them collect unpaid wages, vacation and severance that may be owed by the employer.

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The nature of the employment relationship has shown time and time again that the intervention of the state under the authority of the Employment Standards Act is essential if workers are to be treated fairly by their employer. By imposing limits on the amount that can be collected and the period of time an employee can receive back pay, as proposed in Bill 49, the government is effectively penalizing workers when they are most vulnerable.

During deliberations on Bill 49, members of the committee should consider the consequences of the new section 82.3 of the act, as proposed in section 32 of Bill 49. Under this section, "...no person is entitled to recover money that became due to the person more than six months before the date on which the facts upon which the prosecution or proceeding is based first come to the knowledge of the director." In short, this amendment will reduce a recoverable claim from the present two years to a mere six months.

Such action defies logic, particularly when one understands that many workers delay the filing of a claim until such time as they have terminated their employment. It needs to be understood that in many cases delays in the filing of claims are not the result of procrastination on the part of the worker but a logical and entirely appropriate response to an employment situation where the worker is being denied the minimum standards mandated by law. In our experience, many workers will delay filing a claim because they hope to remain employed while they attempt to secure alternate employment. Once they have secured alternate employment they are generally in a better position to recover moneys owed by the previous employer.

We find equally offensive the section 21 provision of Bill 49 that imposes a maximum \$10,000 cap and an unspecified minimum on the amount of back wages and other moneys that a worker in Ontario will be able to recover. In the face of a \$10,000 cap, a great many workers will be forced either to accept a settlement that is below the amount owing or pursue the action through the courts.

In our opinion there are a number of problems with the proposed cap that require the urgent attention of the committee.

Members of the committee should understand that the enactment of the cap will not simply adversely affect the well-heeled in our society, because workers in poorly

paid sectors of the economy can easily be owed more than \$10,000. Moreover, regardless of previous employment income, workers from all sectors will be hard pressed to retain a lawyer and pursue court action when they have been deprived wages and other benefits such as severance. Again it is not just the individual worker who will suffer as a result of the cap; society will also lose if, as likely, the cap results in increased action that clogs the courts and slows the system of justice.

The unspecified minimum amount of a claim under the act is equally offensive. If this provision of Bill 49 is proclaimed, employers will know that workers will be denied the opportunity to pursue a claim below a certain amount. This opens the door for unscrupulous employers to violate the act with impunity by ensuring that the violation is far below the minimum in any six-month period.

While the unspecified minimum may well ease the administrative costs of government, it is fundamentally the wrong approach. If the government proceeds with this provision, it will seriously undermine the employment relationship for those workers who are the most disadvantaged.

As originally drafted, Bill 49 included a section 3 that would have allowed the parties to a collective agreement to contract out the specific minimums under the Employment Standards Act when the terms of a collective agreement, when assessed together, are considered to provide greater benefits. Last week the minister backed off this provision. Unfortunately, however, she has made it clear that it is still the government's intention to legislate in this way during a subsequent and larger review of the Employment Standards Act.

The Public Service Alliance of Canada would like to go on record as protesting the provision in the strongest possible terms. While it may appear that flexibility would benefit both parties to a collective agreement, the reality is otherwise. First, if the government ultimately proceeds with this provision, employers will be able to address more issues at the bargaining table than they can now under the system, which includes a specific legislative floor. Moreover, given the government's intention in this regard, as originally proposed in Bill 49, it is possible for an employer to argue that unrelated benefits exceed the minimum standards.

Before concluding, I should like to address briefly the issues of enforcement and the use of private collectors that will result in the event the government proclaims Bill 49.

Under the employment standards system as currently constituted, unionized workers have access to the investigative and enforcement powers of the minister. By requiring unionized workers to use the grievance procedure to enforce their legal rights under the act, the government is effectively forcing unions, including the alliance, to bear the burden of investigation, enforcement and the cost of the procedure. While this is bad enough in its own right, it pales when one considers that the arbitration process generally lacks the investigative capacity of employment standards officers. Hence, we believe the proposed changes will adversely affect the quality of decisions that are rendered and the settlements received by unionized workers.

In addition to downloading the enforcement of the Employment Standards Act to unions and unionized workers, the government is intent on transferring its enforcement responsibilities to individual workers and non-union work sites. Under Bill 49, the minister is proposing to end any enforcement in situations where the government considers that violations may be resolved by other means. As well, it is proposing to prevent a claim under the act when the worker pursues court action. As a result, one way or another the individual worker will lose. If a worker pursues a claim for pay in lieu of notice, for example, she'll be denied the opportunity to sue the employer for wrongful dismissal. If the worker decides to pursue the claim through the courts, she will face the prohibitive expense of a court action and lengthy delays.

One of the major criticisms that has been levelled at the government with regard to employment standards is that the government has not done a particularly good job of ensuring that wages and other amounts assessed against employers are paid. The government's Bill 49 response to this criticism is to transfer the responsibility of collections to private collection agencies. In our opinion this is an entirely inappropriate response to the collection problem. In our opinion, what the workers of Ontario need is a renewed commitment to public enforcement and collection.

In addition to our general concern with regard to the privatization of the collection function, the Public Service Alliance of Canada finds that under the Bill 49 amendments to the act, the worker may well end up paying part of the cost of this collection. This will occur in circumstances where the amount of the collection falls short of the amount owing, including the collection fee. As the Ontario Federation of Labour said in its submission, having moneys owed them reduced by collection fees amounts to nothing less than legislated theft. In our opinion, the provision is unconscionable and should be withdrawn.

In closing I should like to acknowledge that while my comments have highlighted what we believe to be serious deficiencies in Bill 49, the bill does contain a few positive changes. In this regard the clarification with regard to vacation pay and the provision that ensures that length of employment and seniority continue during pregnancy and parental leave are the most important. While these amendments are supported by my union, we firmly believe that on balance the legislation does a considerable disservice to the working people of Ontario.

Thank you for allowing me to present this morning.

Mr Baird: Thank you very much for your presentation today. We appreciate it.

One issue that has come up with many presentations over the last two weeks is the enforcement of the act, the provisions calling upon trade unions in unionized environments to enforce the act through their collective agreements. We've heard from a number of unions, in the public and one in the private sector, who have said they have a collection rate of 100%. We heard that from a CUPE local up in Thunder Bay. We heard from an Algoma Steel worker in Sault Ste Marie who said his union was capable of taking care of its members. What is your experience now with the Employment Standards Act

in Ontario with respect to your 60,000 members? What is the average collection rate? How many outstanding orders are there to pay?

Mr Cormier: Members of the Public Service Alliance of Canada work primarily for the federal public service, and we come under different terms and conditions. As our workers move out of the public service and into alternate service, whether it be with the provincial government or crown agencies or private industry, they will come under the provisions of the Ontario act. That is just beginning for us, so I can't really answer your question at this time. We just certified a large group of employees at the University of Western Ontario, 800 or 900 people there, and at this time I couldn't answer that for our union.

Mr Baird: Under the federal code with your employers, though, under the Canada labour code and the arrangements there, do you have a problem?

Mr Cormier: We come under the Public Service Staff Relations Act, and as far as collection, if we have a problem we go to the board, and the board will decide as the independent third party.

Mr Jean-Marc Lalonde (Prescott and Russell): Thank you for your presentation. I think, from what I've heard this morning, you're mainly concerned about the private sector, because within the PSAC the human resources personnel are well trained and they follow very closely anybody who would have a claim. That would be handled very fast over there. To your knowledge, how many claims that your group has received would be over \$10,000?

Mr Cormier: As I said, we would deal with those situations through the board. I'll just give you a for instance from the local I belong to. There were 10 employees who, because of problems with interpretation of overtime pay — the employer said no, there was no overtime, and the union said yes, there was overtime, and we went to the board. The overtime pay in this case, for these 15 employees, came to \$8,500 per employee. That was just from my personal local over a one-year period. If it had taken any longer, they were looking at probably \$16,000 over a two-year period for those employees. That was handled by the board and the board ruled in our favour. We easily would have gone over the cap. In fact, we would have gone over the cap if we had gone over the 12-month period, if we had gone into, let's say, 14 or 15 months.

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Mr Christopherson: Thank you very much for your presentation. We appreciate it.

I'd like to ask you about your reference to the unspecified minimum amount necessary to file a complaint with the ministry. You characterized it as offensive. Could you just expand on that a bit, please? Why do you call it offensive?

Mr Cormier: I'm going to go back to when I was 19, when the Employment Standards Act helped me personally. I think it's probably best that I do that. At the age of 19 I was working as a security guard for Capital Guards here in town. I started working in April and I was working down at Mooneys Bay collecting tickets. After two months there they put me, over at the civic hospital,

on a night shift taking care of prisoners who had burned themselves. I was guarding them in the burn unit at the civic. I really didn't like the job so I went back to Capital Guards, after having worked there a week, and said: "I'm sorry, I'm just not up to this. Put me anywhere you want, but don't put me back at the civic hospital."

The upshot was that they fired me. At 19 you really don't care; you get another job. I was going to university. Employment standards weren't going to pay me for the period I was there, because you only get paid every two weeks, so they got me my last week's pay — I was only a security guard earning \$1.10 an hour — and they got me some pay for my vacation. That was a very small amount because I wasn't earning a lot of money, and that's what I'm talking about. There are people in our society who are earning the minimum amount of money and for whatever reason they get laid off or fired or the company doesn't need them any more. If there are unfair standards, these people just won't get their dollars, and if you have a minimum you're out of luck.

The Chair: We're well over our time now. Thank you, gentlemen, for appearing before us and making your presentation today. We appreciate it.

GLOUCESTER CHAMBER OF COMMERCE

The Chair: This leads us now to the Gloucester Chamber of Commerce. Good morning. Welcome to the committee.

Mr Jim Anderson: Good morning, Mr Chairman, members of the committee, ladies and gentlemen. My name is Jim Anderson. I am the president and CEO of the Gloucester Chamber of Commerce. I am pleased to introduce to you Mr Gerd Rehbein, chairman of the board of the Gloucester Chamber of Commerce. With your approval, Mr Rehbein will join me in the presentation of his report.

The Gloucester Chamber of Commerce wishes to thank you for taking time from your busy schedules and for giving us the opportunity to share with you the views and concerns of our membership regarding Bill 49.

The Gloucester Chamber of Commerce, with its current membership of 760, has attained the distinction of being the largest chamber of commerce not only in the region but in all of eastern Ontario. Our population in Gloucester has surpassed the 105,000 mark, with approximately 4,000 businesses. We are the respected and recognized voice of business, and as such we represent approximately 7,000 employees. The vast majority of our members fall within the small business category of 100 employees or less. In fact, we represent considerably more small business owners and entrepreneurs than we do managers of large corporations.

The Gloucester Chamber of Commerce is an association of Gloucester-area businesses and is the strong, united voice of business, committed to initiating, developing, promoting, protecting and evaluating policies and programs which further economic progress, free enterprise, the quality of life and the social wellbeing of the community — thus the reason for our being here today.

Gloucester is a city of dreams; we are a city of growth. Our business community is growing by leaps and bounds, and in order to support that growth we must continually

look to expansion and the creative and entrepreneurial spirit required for a developing city.

Mr Gerd Rehbein: Mr Chairman, members of the committee, as Jim has stated, our city continues to grow and develop, and a very important part of that development is assuring that, among others, our rules and regulations as they pertain to employment standards keep abreast of both the development and the growth.

The Gloucester Chamber of Commerce not only applauds but fully supports the government's actions in undertaking a two-stage reform of the Employment Standards Act. Indeed the act itself has not only become outdated, it has become cumbersome and difficult to interpret at all levels, especially in light of the ever-changing nature of work and today's workforces. Over the years legislation has been added to the act without a complete inquiry into the underlying framework. There are now exemptions on exemptions, and this then becomes very difficult and almost impossible for the average reader to define or piece the various exemptions together. To this end, this chamber of commerce eagerly awaits the second phase of reform and supports the stated goals of promoting greater self-reliance and flexibility among the workplace parties.

The government has stated that Bill 49 has three goals: (1) to allow the Ministry of Labour to administer the Employment Standards Act more resource-efficiently; (2) to promote self-reliance and flexibility among the workplace parties; (3) to simplify and improve some of the act's language. Not only do we support these goals, we are of the belief that Bill 49 meets them. In so doing, the bill continues to protect minimum employment standards for workers.

The chamber is very supportive of those provisions of Bill 49 which eliminate duplication of claims, limit recovery of money to a six-month period and extend the appeal period.

1020

Employers are increasingly faced with defending claims of the same disposition, or for the same redress, in multiple forums. This problem is not only restricted to employment standards complaints; it also spans a variety of employment-related statutes.

As an example, when dealing with the Employment Standards Act, non-unionized employees are able to have employment standards disputes dealt with by the courts in wrongful dismissal actions, as well as by the employment standards branch. Unionized employees are able to file grievances and arbitration processes and may also file complaints with the employment standards branch. Employers are often left vulnerable to defending the same dispute in multiple courts or hearings and must bear the associated costs. In the cases of multiple claims in the courts and to the employment standards branch, duplicate public resources are utilized and, often as not, the public purse is also unfairly burdened. Based on these facts, the chamber supports the provision of Bill 49 which would eliminate the ability to pursue duplicate claims in multiple forums.

Mr Chairman, we know and understand that you and your committee have a busy schedule and therefore you have placed time limits on the presentations. Accordingly,

it will be our intention to remain within these restraints. In this respect, we will not go into great detail on each and every issue, but instead will try to present a short summary of our views on what we consider key issues.

In general, the amendments as presented in Bill 49 signal a significant reduction in the administration and enforcement of the act. We agree.

Where collective agreements exist, enforcement of the act must be through the grievance and arbitration procedure. This will lead to a reduced bureaucracy and reduced involvement of government-appointed adjudicators and, correspondingly, greater responsibility for arbitrators. We agree.

In cases of wrongful dismissal with termination and severance pay, the bill will require employees to choose whether to sue in court or seek enforcement through the act. This will reduce employer vulnerability to duplicate claims and associated expenses. We agree.

The bill provides greater opportunity for employers to obtain exemption from the act's requirements by providing superior contractual benefits when such benefits are assessed in the aggregate, rather than individually as at present. We agree.

Two weeks' vacation will now be required after each 12 months of employment, whether or not the employment was active. We agree.

New lower monetary limits for orders under the act and new time limits for claims are introduced. We agree.

Services, and not just seniority, will continue throughout pregnancy and parental leave for purposes of service-driven contractual entitlement. We also agree.

In conclusion, we are of the opinion that stage 1 of Bill 49, being the reform, with the purpose to simplify the employment standards process will be accomplished by passing this bill.

In addition, we look forward to stage 2 of the reform, where it is proposed to make enforcement of the Employment Standards Act more efficient and effective, and will improve the system. We are also aware of the need to modernize and update the framework of the Employment Standards Act to properly meet the needs of today's modern employer and the ever-changing workforce.

It is our understanding that the government is committed to protecting basic minimum standards for workers and in this respect will issue a discussion paper this fall for further consultation and discussions. We look forward to this commitment and will follow up its proposals on how best to improve the legislation.

Mr Chairman, members of the standing committee on resources development, the Gloucester Chamber of Commerce is of the opinion that the changes and proposals as presented in this bill should be legislated into the act. We further believe quite strongly that only entrepreneurship, innovation, freedom to trade and carry on business in the marketplace and the preservation of the free enterprise system can effectively and efficiently lead the way to create new jobs and prosperity in this province. Simply put, the freedom to develop and carry on business, job creation and economic growth should be our first business priority in Ontario. We believe that the proposed reform as presented in Bill 49 goes a long way to addressing the real issues facing business and econ-

omic prosperity in Ontario and, if implemented in the proposed form, will only serve to make the business and economic situation a lot better than it currently is.

Please let me state here our profound appreciation for your having given us this time and attention and for permitting us to make this presentation here today. Working together, we can reach for tomorrow. Thank you.

The Chair: Thank you both. We've got three minutes left, so one minute per caucus. Time for a quick question each.

Mr Grandmaitre: Thank you for your presentation, Jim. I think it's a good one, except that I want to challenge you on something. You know, there's an old saying in business that time is valuable and time is money. How come you people are willing to accept what's before you in Bill 49, and this is only stage 1? I can't recall dealing with a piece of legislation that has two stages. You accept the fact that maybe stage 1 will improve the administration, but you don't know about the enforcement, and stage 2 is all about enforcement of this piece of legislation. How come you're accepting this kind of legislation blindly?

Mr Anderson: I'll answer your question, Mr Grandmaitre, in this respect, in that business people are up to here with government in their pocket. They're crying: "Leave us alone. Let us do business. Give us something we can work with." They are accepting of this, as this is part of the change, and as I stated in the report, we are definitely looking forward to the second phase. As we understand, the government is committed to open discussions on it and you bet your life that we will be there and do a follow-up on those as well.

Mr Grandmaitre: But we don't have this guarantee, Jim. We don't have this guarantee on stage 2. Hopefully we will have our say.

Mr Christopherson: Gentlemen, thank you for your presentation. We appreciate it. Let me just say that in terms of your "profound appreciation" for being given the time to make this presentation, on behalf of the party that made sure we had public hearings, I accept your thanks for that opportunity.

I also want to draw attention and underscore your statement on page 5 where you state: "In general, the amendments as presented in Bill 49 signal a significant reduction in the administration and enforcement of the act. We agree." I agree too, and I appreciate your support in recognizing that that's exactly what the government is doing.

Lastly, on page 4 you make the statement: "In doing so" — presenting Bill 49, that is — "the bill continues to protect minimum employment standards for workers." We've heard submissions in every community across Ontario, the overwhelming number of which make the case that the cap on the amount that you can claim for — from virtually being unlimited, now to \$10,000 — the unspecified minimum threshold that you have to cross and the reduction in the time frame that you can seek back pay that you're owed are indeed taking away rights that workers now have, and I would ask you how you reconcile those two positions.

Mr Rehbein: The standards are there and are working very well. I don't think that anything, hopefully, that the government is doing will jeopardize that.

Mr Christopherson: But you're saying "hopefully." We've heard presentations where people have said very clearly they are and I submit to you they are also. You're making the case not hopefully; in writing you've said — and in the beginning you said you've taken a lot of time to prepare this so I'm assuming this wasn't done lightly. You say that it continues to protect minimum employment standards for workers, and I'm saying to you that we've heard overwhelming evidence to the contrary. How do you say that the inability to claim for up to two years' wages that you're owed, that you cannot claim for any more without paying money out of your own pocket, is not a right denied?

1030

Mr Anderson: We've looked at this as best we could with the information we've had available, and we are basically in agreement that Bill 49 as presented is good. We see the problems from what you're stating are and can be a problem, but in changing the act, you can't have everything perfect. It's not a perfect world.

Mr Christopherson: We're not seeking anything perfect. Right now, those rights are in place. This bill is taking away those rights, and you're saying it isn't.

Mr Toby Barrett (Norfolk): Mr Anderson and Mr Rehbein, perhaps in contrast I want to thank you for presenting and for this brief on behalf of the Gloucester Chamber of Commerce and the up to 7,000 employees in the organizations you represent. The brief makes a compelling argument for the need for your people to have the freedom to carry on business, to create jobs and boost our economy. The existing legislation is out of date, as you've indicated. It's unwieldy. It's been around for decades and is a creation of a patchwork approach.

You also talk about the inflexibility, and the world of work is changing, as many of your organizations have told you. Time is money, as was represented earlier. Your time is money. We're asking you to continue to put some time on this. There is a second phase and your input would be valued. Your people are partly represented by MPP Garry Guzzo, my colleague in this area, and we hope to hear more from you.

The Chair: Thank you, gentlemen, for taking the time to appear before us today. We appreciate it.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 439

The Chair: That leads us now to the Ontario Public Service Employees Union, Local 439. Good morning and welcome to the committee.

Mr Jim Murray: Thank you very much, Mr Chairman. My name is Jim Murray, and I live in Brockville, Ontario. I work in the psychology department at the Brockville Psychiatric Hospital. I'm a member of OPSEU Local 439 and a representative on the Brockville and District Labour Council. I'd like to thank you very much for the opportunity to attend this morning.

I'd like to begin by taking a look at some of the terminology this government is using, and what I mean by that is that the language is very important. If you buy

into the company speak, the language of the day, sometimes you're buying into more than just a language, but actually a justification of what's going on.

I'd like to begin with what this government calls its "business plan." I certainly have no disagreement with that. It definitely is a business plan. It is for and about business, not about government, not about workers. It is for and about business, and I think this government has completely abdicated its role in terms of being the custodian of what we used to call the public good. It may be out of fashion now, but they don't want that role any more. They see any sort of regulation or any sort of adjudication as something that has to be done away with, something to get out of the way and let business go on with their laissez-faire, David Frum attitude that they'll look after things for us.

Secondly, I'd like to look at what we call "downsizing" or, even better, "rightsizing." Really what it means is that people get laid off. A lot of people and their families are put out of work. Rather than look at that and the seriousness of that, this government and many of their business colleagues like to look at it and congratulate themselves and celebrate their new competitiveness. They're doing better. I guess other people are doing better for less. I guess that would be the people who are out of work.

"Outsourcing," contracting out, is something that's very interesting. Really what it means is that businesses and companies are able to hire people through what I see as the 1990s version of the slave trade market. You have these employment agencies, the Drakes and the Kellys, that are agents for workers, I guess, and they hire people on with very low wages and no benefits whatsoever, let them work until the time where they would possibly have to be hired on, let them go and bring in another batch. This seems to be a great idea, according to our government.

I know it's coming from other places. I heard a television ad just the other day from Merrill Lynch. It's running in the US, and Merrill Lynch is putting together a nice little commercial that says they are now in the business of doing many of the businesses and looking after the business that government used to do. They didn't say anything about the workers. What they really were concerned about and the bottom line was that they were doing such a great job for the shareholders. To me, that's making money on the backs of workers, citizens, governments. Really what they're doing is making workers into the human equivalent of the Post-it note. You use it up; you throw it out.

The "rich": Mike Harris doesn't like anybody to be called rich. The rich are now called "job creators," so I apologize to anybody in the room here who might be rich, but you're now a job creator if you are. Apparently, when you're given money from the government, probably a lot of money from the tax cut, probably most of the money from the tax cut, your money somehow is a positive thing. You're going to create all these jobs and do wonderful things. But it's a funny thing: Money given to working people just seems to vanish or disappear. We don't know where it goes, so it's really not a good thing to give workers money, I guess.

I think that when we look at Bill 49, we should look at where it fits in. First of all, Elizabeth Witmer said that it was a "housekeeping" issue, really wasn't much to worry about. It's a funny thing. This government said the omnibus bill, Bill 26, was a housekeeping issue, and Maclean's magazine didn't seem to think so. It's Ontario's bully bill, one of the biggest undertakings by government to grab power ever to see the Legislature. Actually, there weren't any public hearings scheduled on that one as well, and it took a Liberal member to sort of barricade himself to get public hearings on that. But this is clearly not a housekeeping measure.

If you look at Bill 49 within the context of what's happened so far, it fits in rather well. You had Bill 7, which slashed employees' rights as far as the labour law goes, the Labour Relations Act. You had a repeal of Bill 40, which now allows "replacement workers," which is the polite word, to come in — I prefer "scabs" myself — to really help things out in a strike situation. That would really go a long way.

Now you've got Bill 26, as I mentioned, which among other things grabs at workers' pension rights, and Bill 49 really wants to hit the basic standards that all employees across the province work under. It's not housekeeping at all. I think it's very clear to people when they look at it what the hidden agenda is there. When you look at things like severance, overtime, public holidays, I don't think two weeks' holidays is too much. I don't think anything over 48 hours called "overtime" is too much. I don't think a week's severance pay for every year, if you've worked 20 or 30 years for a company, is too much. But apparently some people do think it's too much and they want to take that away. Otherwise, why change it?

Specifically, Bill 49 deals with what they call flexible standards. "Flexible," I guess, means to change these standards so they can be overruled. In fact, they can override the legal standards if the collective agreement "confers greater rights...when those matters are assessed together," and apparently it says not only a collective agreement but any sort of agreement or working agreement. So an employer possibly would be able to say: "This is a working agreement to work here. Do you want to work here? Sign this paper, and these are the standards that you work under."

From a personal viewpoint, in my home town, we just had a plant, Phillips Cables, that had been in operation since 1922 close its doors, and the company moved it to its American-based operation. Those workers last year were asked to give major concessions to that company in their collective agreement, which they did. This was to avoid closure. Their backs were to the wall. Quite incidentally, they closed the plant after the passage of Bill 26, and those senior workers who might have had a chance to join in the pension program and bridge to a pension were shut out. In fact, there is no way for those workers to get any pension money other than what they've contributed so far. The company has said, "We will not allow people to continue." We have a pension plan. They could have allowed paid-up members to remain in the plan. Even though the company is out of business, it's doing rather well, but it's doing it in the USA. These people are not allowed and they will get no pension.

Under Bill 49, what might have happened a year ago is they would say: "Look, we don't want to close the plant. Give us a break here. We will give you a little more overtime, we'll give you a little more vacation credit, but could you help us out on the severance?" A year later these people could be faced with the situation of: "See you later. Remember? No severance. That's it. The workers walk away with nothing; the company walks away."

1040

Also from my home town, there was a clipping in an editorial that read, "The Ministry Must Defend Rights of Employees." You might have read about this — I'm sure you have — about a restaurateur in Belleville and Port Hope, I think it is, who decided he didn't want to pay his workers at all, that they could work for tips; that was fine. I think there's some action being taken, but the message that's related by the editor here is that we should get on this; this is the start of something we haven't seen in Ontario. People like this owner are testing the waters to see how far Mike Harris is going to let him go.

Interestingly, in Bill 49 as well, someone who collects moneys owed to him, an employee who legally wins his case through arbitration and wins salary that he has coming to him, cannot collect that. The government will not collect that; the Ministry of Labour is getting rid of its collectors, apparently. We're seeing the first look at privatization. Private collectors will collect the moneys owed, and the bill for that collection will come out of that employee's money. To me that's unethical, to say the least, if not illegal. It's legalized theft, in my opinion. But what makes that different from the restaurateur who makes his workers work for tips? These collectors, these bounty hunters, are working for tips. They're forced tips from the employee's money. The employer's not paying him to do the job that the employer wants done. This is crazy.

I think Mike Harris is saying that Bill 49 fits in as well as other pieces of legislation because he wants to say that Ontario is open for business. We hear that all the time. I think a better term, a better expression, would be that Ontario is now open for exploitation.

What have we seen so far from this government? We've seen exploitation of the poor, single mothers leaving retraining programs to stay at home because they can't afford it; they have to stay on welfare. People are now being forced apparently to go through some made-up workfare schemes rather than get a real job. They're the sort of undeserving poor that we read about 100 years ago in social literature of this country. We've seen exploitation of seniors who now must decide, some of them, whether to buy groceries or get the pills and the prescriptions they need, and wondering whether they'll be able to stay in the seniors' housing once they're privatized, if they will have enough money. We're seeing exploitation of sick and disabled people who wonder if the supports that are in place for them to keep them there will be there, whether or not they'll be able to afford health care, or will it be just for the rich — excuse me the job creators.

Now we're seeing exploitation, and we will, of the environment because this government wants to lower

standards all over, not just employment standards, but environmental standards. One of the versions that's been put out recently is that standards are so low that they're going to be on a par with the worst US states. This is Ontario?

And we're seeing exploitation of workers on all fronts, from Bill 7 to Bill 40 to Bill 26 and now Bill 49. Workers are being hit on all fronts.

I think logically, to wonder where this is going, are child labour laws next? We could get into that Oriental carpet market, you know, get those little hands and little fingers working. Let's stay competitive with the rest of the world, no matter what it takes.

I'd like to say that none of you people here at this table will have to face the minimal standards, as outlined, that Bill 49 will change: nobody, including myself, hopefully. We like to think that we have some sort of supports, some sort of benefits in our jobs, but apparently other people are not deserving of those. It would be nice if people, and particularly the members of government when you stand in your place and you vote yes as you're trained to do, to support this bill, think about not only yourselves but your children, because when your children enter the workplace, they will be facing those standards. So it's not just a one-dimensional thing.

I'd like to think that some of the people who represent us in government came from working-class families, and when you vote for that bill I'd like you to think about your parents and your grandparents who worked their careers, their entire lives, trying to build something in Ontario so that we would have something that we're proud of; that people would not feel that they're going to be thrown out the door the next day. When things come bounding down around you, you can make a statement as to what role you played in all of that. Did you help build something up or did you just take this thing down?

Speaking of families, my father recently turned 82 years old. He was in business in Ontario for over 30 years and always considered himself a very conservative man, as many people did from my part of the country over the years. But recently he has told me that he is absolutely shocked and very fearful for what's happening in this province. He's seen a lot in his time and he said to me: "This isn't the type of government of a Leslie Frost or a John Roberts or a Bill Davis. No, this is a return to the mean-spirited have/have-not times of the Mitch Hepburn years." That's where Mike Harris is taking us: to an Ontario that has greed on one hand and despair on the other.

The Chair: Thank you. You've ended within five seconds of the appointed time. Perfect timing. Thank you very much for appearing before us and making your presentation here today.

Mr Murray: Thank you.

TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION

The Chair: That leads us now to the Transportation-Communications International Union.

Mr Grandmaitre: What about the Provincial Council of Women?

The Chair: They did not show up. They cancelled. The Provincial Council of Women cancelled, hence the change in the agenda and hence the fact we're running ahead of schedule. So thank you for accommodating us in that regard and welcome to the committee this morning.

Mr Don Bujold: Thank you, and good morning. My name is Don Bujold. I'm the national president of the Transportation-Communications union. My assistant is Maureen Prebinski, education information director.

The Transportation-Communications International Union (TCU) represents over 10,000 workers in Canada who are involved in the transportation of goods, people and information. The majority of our members work in industries that lie within federal jurisdiction. On behalf of our members who are regulated by Ontario provincial law, we are compelled to respond to the proposed amendments to the Employment Standards Act.

Before I begin, I must note we are aware of one of the most controversial components of Bill 49 — namely, those sections allowing employers and unions to opt out of minimum standards, has been withdrawn by the minister. However, in light of the minister's comments that she intends to reintroduce the amendment later in the fall, we still intend to devote some time during this submission to the subject.

I'd like to take the committee back to the remarks of the minister to the Legislature when she introduced Bill 49 in May: "In keeping with our government's desire to encourage greater self-reliance in the workplace, employers and employees will be required to settle more disputes on their own rather than appealing to the ministry in each and every case. This will allow ministry staff to focus attention on helping the most vulnerable workers."

This statement alludes to what I feel are three major flaws in Bill 49 that will erode the rights of workers in this province. Enforcement of minimum employment standards, the historic floor of rights that has existed in Ontario for decades, would be contracted out and the financial burden will fall on workers. A two-tiered system of enforcement of employment standards will inevitably lead to an erosion of standards for workers. The most vulnerable workers in Ontario — those without union protection — have much to lose under Bill 49.

What was originally presented as minor technical amendments actually contained a major policy shift in regard to the basic workplace rights of organized and unorganized workers that have existed in this province for years. They indicate that this government intends to surrender its responsibility to enforce its own laws.

I will now briefly outline the major sections of Bill 49 that cause the deepest concern.

1050

Section 3, flexible standards: As I stated earlier, we are aware that this has been withdrawn by the minister for the time being. However, I feel it deserves some comment. Historically, employment standards are overall minimum standards of workplace rights that cannot be opted out of by employers and unions. Section 3 of the bill would have allowed the parties in a unionized workplace to opt out of important minimum standards.

Section 3 would have allowed a collective agreement to override legal minimum standards on severance pay, public holidays, hours of work and vacation pay. It would have removed the historical floor of rights for unionized workers and put them in the realm of collective bargaining. Theoretically, unions could be faced with trading off such things as improvements to pension plans just to protect their members from increased hours of work.

Section 3 of the bill introduced the concept of negotiating below standard provisions for unionized workers. It is the first step towards the erosion of standards for all workers. If unionized workplaces can opt out of minimum standards, then non-unionized employers will demand the same right. They will demand the right to opt out of their agreement with government: the Employment Standards Act.

From another perspective, this amendment would have led to more conflict in the workplace. Peaceful contract settlement is one of the basic objectives of industrial relations and is the public policy concept behind labour relations legislation. Section 3 would erode industrial peace. Minimum standards that were supposed to be protected by law would have become subject to bargaining and labour disputes.

Section 20, enforcement: Bill 49 would amend section 64.5 of the act and deny unionized workers access to the investigative enforcement powers of the Minister of Labour. In the event the employer violates the act, union members would now have to use the grievance and arbitration procedure to enforce their legal rights. Essentially, unionized workers through their union dues will have to pay to enforce the standards employers are legally obligated to apply.

Section 20 contracts out enforcement of legal standards, standards the government is obligated to uphold and enforce. This two-tiered system of enforcement means that unionized workers will bear the cost of fighting infractions of the law by their employer. Through their union dues, workers will have to absorb the cost of investigation, enforcement and their related costs. Employers will take advantage of their new-found freedom to violate the law.

Where employment standards officers had the power to conduct investigations and make rulings, there was a consistency to the application of the law. Under private enforcement, an arbitrator will have the jurisdiction to interpret the law and make rulings. This would be new, uncharted territory and we fear arbitrators may not be able to match consistency of rulings under public enforcement. By privatizing enforcement, Bill 49 will create a two-tiered system of standards, even for unionized workers. Larger unions will have the financial resources to bear the additional costs. Smaller unions will struggle and employers will use every avenue possible to try to break the union financially.

Sections 19, 21 and 32, enforcement for non-unionized workers: We are already seeing the fruits of the new open business environment in Ontario. Recently, in Belleville and Port Hope, the owner of a restaurant chain publicly admitted he does not pay his servers any wages. He considered them volunteers and they worked for whatever tips they could get. At first, the Minister of Labour stated

it would take two months to investigate this open and public violation of the law.

How would these workers fare under the proposed amendments to the Employment Standards Act? Under section 19 of the bill, they would be denied access to the courts for remedy if they simultaneously filed a complaint under the act. Under section 21, they could not recover more than \$10,000, regardless of whether the employer owed more. Finally, under section 32, these workers would be limited to receiving a maximum of six months' back pay from the date a complaint was filed, regardless of whether they are owed more by their employer.

So the non-union worker is faced with a choice. He or she cannot file a lawsuit for wrongful dismissal and file a claim with the Ministry of Labour for severance and termination pay. The worker cannot file a claim for back wages if a civil action has been taken. The worker would have to choose between filing a complaint or filing a lawsuit. Regardless of how much is owed, the most the worker could receive is \$10,000, and back-pay claims cannot exceed six months of wages owed. The employer is rewarded for breaking the law when maximum claims limit their liability.

In contrast, the Ministry of Labour still would have up to two years from the date of complaint being filed to conduct an investigation, and a further two years to enforce an order for money owed. An employee could theoretically have to wait up to four years before receiving what is owed.

In light of the minister's comments that these amendments would allow ministry staff to focus their attention on the most vulnerable workers in Ontario, we fail to see how the most vulnerable of Ontario's workers will benefit. In fact, more roadblocks have been put up for these workers by these amendments.

Bill 49 puts in place the process for privatizing the collection function of the Ministry of Labour's employment practices branch. Private collectors will have the power to collect from employers any amounts owing under the act.

Once again, instead of enforcing the act and forcing employers to pay when they violate the act, the government has taken the privatization route and will farm out the problem to a collection agency.

Will private collectors be concerned with what a worker is legally entitled to receive under law? This is an ethical problem that must be looked at. It would be more likely that private agencies will be more concerned with collecting their fees quickly rather than collecting what is truly owed to the worker whose rights were violated. The TCU is gravely concerned that workers will be pressured to agree to settlements of less than the full amount owed. Collectors may argue, if only for reasons of expediency, that less is better than nothing.

Of almost equal concern is the ability for the employment standards director to authorize the private collector to charge a fee from persons who owe money. If the amount of money that is ultimately collected is less than the amount owing to the employee, regulations will enable the apportioning of the amount among the collector, the employee and the government. In other words, a worker who is owed money could actually be required to

pay fees to the collector. This is not and cannot be morally justified. We urge this committee to reject this proposal and maintain and improve the system of public enforcement.

Positive amendments: The TCU applauds amendments relating to vacation entitlement and seniority and service during pregnancy and parental leave.

Section 8 of the bill clearly establishes that two-week annual vacation entitlements would accrue, whether or not the employee actively worked all of the year or was absent due to illness.

Section 12 of the bill would amend subsection 42(4) of the act ensuring that employees are credited with benefits and seniority while on pregnancy and parental leave.

In summary, the TCU must go on record as opposing Bill 49. As Bill 49 was introduced only a few months before a planned comprehensive review of the Employment Standards Act, a more appropriate procedure would have been to include these changes as part of the review. Even so, we feel there are fundamental flaws with the amendments that are much more than just minor technical amendments:

(1) Enforcement of minimum employment standards, the historic floor of rights that has existed in Ontario for decades, will be contracted out and the financial burden will fall on workers.

(2) A two-tiered system of enforcement of employment standards will inevitably lead to an erosion of standards for workers.

(3) The most vulnerable workers in Ontario, those without union protection, have much to lose under Bill 49.

Basic employment rights cannot be made more difficult to obtain and enforcement of these rights should not be contracted out to third parties and privatized. Given the minister's comments that she intends to reintroduce provisions allowing a collective agreement to override legal minimum standards on severance pay, public holidays, hours of work and vacation pay during the comprehensive review of the act, an erosion of standards is inevitable coupled with the amendments contained in Bill 49.

I thank you very much for the opportunity to come here and make this presentation to the committee.

The Chair: Thank you very much. There's two and a half minutes left, but if you promise to keep it within a minute we'll stretch it a little bit. The questioning this time commences with the New Democrats.

Mr Christopherson: Thank you for your presentation. It's an excellent document. Somebody's obviously spent a lot of time getting it nice and clear.

We heard from Mr Anderson of the Gloucester Chamber of Commerce this morning in his document that "the bill continues to protect minimum employment standards for workers." That's their submission. I must say, the Hansard will reflect that I don't think he defended that position very well.

100

When you talk about, for instance — and I'm just picking one — the fact that an employee can no longer claim for more than six months when right now they're entitled to claim for two years, would you say that that's

a clear indication of a right that's been denied a worker in Bill 49, a right that exists now and that's absolutely being lost, and could you explain, in as clear a language as possible, why you would believe that if that's so?

Ms Maureen Prebinski: As you said, currently a worker has a right to claim back wages in the amounts owed up to two years. By eroding that right to six months, it allows the employer to continue violations of the act, and by putting them in periods of less than six months and paying what's owed, continue doing it in a continual fashion like that. We see that the Bill 49 amendment erodes the fundamental right of workers to their two years of back pay, if it's entitled.

Mr Baird: Thank you very much for your presentation. Given that we only have a minute, I just have a few comments. You mentioned in your presentation the situation involving the Screaming Tale in Belleville and Port Hope, and that the Minister of Labour said it would take two months to look into it. The last three or four Ministers of Labour, I think I can safely say this, don't get involved in individual cases. We do that because it would be inappropriate for the political actor to receive a call from a constituent or from a friend or voter saying, "Listen, I'm having some problems with an employment standards officer; could you just call them off?" I know I've received, as a member of Parliament, a number of calls requesting that. What I say is: "No, I don't get involved in those issues. If an employment standards officer is investigating you, they'll investigate you independently." So that's a very important principle that we adopt. The professionals within the ministry who provide that investigative function did go in and issue orders, and I believe the place is out of business. Actually, one of the first contacts our ministry got on that issue came from the member for Scarborough East, sitting to my right.

The second issue was the privatization of collection. I guess I can indicate to you that we're just simply not satisfied with collecting 25 cents on the dollar. That's what the last three governments, including this one, are collecting. We're only collecting 25 cents on the dollar. I'm just abhorred by that. I think we can do a much better job than that. The minister believes we can. That's what we're seeking to do. I guess if there were any easy solutions to getting that up to 100% in one day, certainly we would have done it. I know the previous government would have done it, and so would the Liberal government.

So I guess in terms of the ongoing review, if you have any specific suggestions on how we can get that up to 100% we'd love to hear them. If you could get back to us, because I think we're very keen. It's the biggest disincentive to people paying. If people know that there's only 25 cents on the dollar being paid they don't pay, so we want to get that up there. We'd welcome any suggestions you folks would have in terms of the broad amount of experience you bring to the table.

Mr Hoy: Good morning, and thank you for your presentation. We agree with you that this part of Bill 49 should have been tied in with the comprehensive review that will follow this year and into perhaps next year. It seems that it would have been better to discuss the whole

issue of labour relations and so on all at once. Any amendments that might flow should have been discussed all as one package so that we could really get a true grasp of what the government's thinking about here, rather than this piecemeal breaking up of the discussion.

On page 3 you say, "If unionized workplaces can opt out of the minimum standards, then non-union employers will demand the same right." Do you see anything in Bill 49 that would prevent those employers from demanding that right, and does the bill provide protection, in your mind, for those non-unionized persons?

Ms Prebinski: The bill currently, as written, doesn't amend the Employment Standards Act that would allow non-union workplaces to demand that right, but we see that as part of the whole philosophy that exists out there today. If the two-tiered system of standards came to be, employers in unionized environments can come to the table and demand that we opt out of the minimum employment standards. We see inevitably that non-union employers will approach the government requesting amendments to the Employment Standards Act so that it gives them the same right to opt out.

The Chair: Thank you both for taking the time to appear before us this morning. We appreciate it.

HOSPITALITY AND SERVICE TRADES UNION, LOCAL 261

The Chair: Next up is the Hospitality and Service Trades Union, Local 261. Good morning. Welcome to the committee. Just as a reminder, we have 15 minutes for you to divide as you see fit between presentation time and question-and-answer period.

Mr Jim McDonald: We come before the committee today representing approximately 1,600 members of the local here in Ottawa and approximately 10,000 to 12,000 members through affiliated unions across the province who are predominantly employed in the hospitality industry, which is also known and regarded as the second-largest industry in the province.

As you know, the original Employment Standards Act evolved from a need in the 19th century to place controls on the employer's ability to exploit workers through the freedom of contract. The Employment Standards Act has evolved through the years and has now come to protect such standards as minimum wages, hours of work, overtime, public holidays, vacation leave, pregnancy leave, parental leave, equal pay for equal work, termination notice, severance pay and provisions to help laid-off workers.

Never through the course of the history of the Employment Standards Act have provisions been extremely generous in the form of dictating to employers large quantities of money or large entitlements to benefits, but they have served the purpose in setting a minimum floor and they have established the purpose of stopping exploitation of workers.

With the introduction of Bill 49 the labour minister, Elizabeth Witmer, has publicly stated that the amendments being proposed are of a housekeeping nature. Clearly, after we had a chance to read through the amendments, we see that they're much more substantive than that of a housekeeping nature. In reality the pro-

posed amendments really only go to support another initiative of an anti-labour government. The changes are substantive to everybody: They have major impacts on both union and non-union workers and they help employers by making it easier and cheaper to violate the Employment Standards Act than it is to comply with it.

For the purpose of presentation here today we have subcategorized the particular parts of the act.

I'll start with flexible standards. The provisions of Bill 49 to include flexible standards and allow for basic minimum standards to be negotiated into a collective agreement put things right back at the mercy of the ever-powerful employer once again. This, combined with Bill 7 which was passed in November 1995, further complicates the unions' role and their ability to productively, efficiently and effectively negotiate proper terms of employment, conditions of employment, for employees in the province. Without minimum standards there will be no minimum guidelines for employees to follow up at the negotiating table. It puts everything up for grabs, loses decades of progress made in labour in Ontario and goes back to the take-it-or-leave-it scenario of the employer.

When you combine this take-it-or-leave-it potential with the changes in the Labour Relations Act last November, strikes are going to be much more difficult and negotiations are going to be much more difficult. We can foresee much longer, harder negotiations, longer strikes, more violent strikes, and there doesn't seem to be an end to it.

1110

For non-unionized workers Bill 49 effectively erodes decades of progress made to allow non-unionized workers to continue to make an acceptable living standard.

It's common knowledge that non-union workers also benefit from the abilities and negotiations of union workers. Where a union has been successful in negotiating collective agreements, rates of pay and conditions of employment in a particular industry, generally speaking non-unionized employees of similar businesses usually benefit from those types of gains. Historically the union has always been able to negotiate higher wage increases than non-union employees, but employers came along and also gave non-unionized workers better working conditions and wages of pay. If we're now going to allow employers to negotiate lower standards and lower wages, then it follows that non-unionized employees will be affected proportionately.

Giving the employer the discretion to increase the number of hours of work will do nothing but eliminate jobs. If an employer is allowed to have somebody work 60 hours a week instead of the 44 currently and is able to offset that by giving an extra week's holidays, one out of every three employees could risk losing their job. Once they've lost their job, where do they go? They're going to go right back to the government social assistance programs, welfare, UI, job retraining etc. The perceived benefit of Bill 49 will not reduce costs to the government at all but will only transfer them on to another government department.

The money an employer saves through these initiatives — or the higher profits that a company could realize because of these initiatives — will most likely not find its

way back into the economy. If it's not given to the employees, they have nowhere to spend it. They will not be able to support local Ontario businesses by buying their goods and products because they won't have the money to do it.

If it's the minister's objective to try to close the gap between conditions of work of unionized employees and non-unionized employees, this itself won't achieve the goal either. Historically the philosophy of unionism, and in organizing a particular workplace, has been to level the playing field between employer and employees to permit them to negotiate fair wages and fair working conditions through collective bargaining. The same philosophy works in reverse for non-union employees. History also says that where an employer treats his employees well, pays them equitably and gives them proper working conditions, they resist having the union organize their activities.

With respect to enforcement of the act, we can see the switch-over of Bill 49 as just being a way to cover the government's current ineffectiveness in enforcing the act.

The proposed amendments will serve two purposes: They will increase revenues for businesses through lower wages and deteriorating working conditions, and they will minimize the financial liability to all businesses which are guilty of violations under the Employment Standards Act. Given the government track record currently, they will also cover up the ineffectiveness of the government to enforce the act as it stands now.

In 1994-95, out of approximately \$64.3 million assessed against employers in favour of employees, only 26% was actually collected and turned over to employees, and 35% of the reason for that was because employers simply refused to pay, not that they didn't have the money. They just said, "No, I'm not paying it."

With respect to going to civil courts versus Employment Standards Act, for non-unionized workers this is going to create an unfair and unnecessary burden both financially and psychologically. The claim limit of a maximum of \$10,000 and a maximum period of six months to make a claim will in effect stop employees from getting what they're entitled to.

Employees historically do not submit claims under the Employment Standards Act while they're currently employed by the violating employer. I guess the biggest reason is fear of reprisal, and a very legitimate fear of reprisal. Forcing them now to put in a claim at a limit of \$10,000 within a period of six months is either going to force them to tolerate the violation for longer periods of time and then take less or accept less when they finally do come to issue a complaint, or it's going to force them to want to leave their employment out of fear of reprisal in order to go after what is justifiably theirs.

As a matter of interest, the cost associated with civil court action as opposed to employment standards probably will not produce any cost or expenditure reductions to the government either because the government is subsidizing the court system as much as it would subsidize the less expensive Employment Standards Act enforcement.

The bottom line for non-unionized employees is that they're going to be left with a decision: either to take the

easy, least expensive way out and apply under the Employment Standards Act provisions of Bill 49 and settle for less than they're entitled to; or to go to court, incur a great deal of expense, a prolonged period of time for court scheduling — you can wait up to two or three years now to even get your case heard — to get what they're entitled to.

For unionized employees, the other means referred to in Bill 49 aim directly at the grievance and arbitration process contained in collective agreements. This would also mean that unions and the membership would have to bear the costs of getting resolutions to problems or infractions of the Employment Standards Act. Currently the Labour Relations Act doesn't provide for the awarding of damages where someone is found to be guilty of a violation. Now the unions and members are going to bear the cost of getting justice through the system.

For labour relations purposes the Employment Standards Act, for all intents, now will be considered to be part of a collective agreement. This puts the ability to decide on it in the hands of arbitrators and Ministry of Labour and increases the union's duty of fair representation to its members with respect to any complaints going through the Employment Standards Act.

Arbitrators and the Ministry of Labour will now have to interpret collective agreements without having the benefit of existing minimum standards to rely on. They'll have to interpret the intent and negotiating history of every individual collective agreement, which will fall under scrutiny, to find out whether or not rights contained in a collective agreement confer greater rights when assessed together. That in itself will be difficult when the term "confers greater rights...when...assessed together" has not even been defined in the act.

In the investigative nature of resolution through arbitration, do arbitrators actually have the required investigative power that is currently enjoyed by employment standards officers and adjudicators in order to properly investigate? If they don't, and if they don't have access to the same powers to investigate, their jurisdiction could be rendered useless, leaving unionized employees with absolutely no recourse at all for violations under the Employment Standards Act. This situation could even be more prevalent in cases where a business is involved in a related employer situation or a successorship provision because the parties of the related employer or the successor may not have been party to the arbitration itself and therefore may not be bound by any decisions made by the arbitrator.

With respect to maximum claims of \$10,000 and/or a period of six months, this places a very tight limit on employees. Even the most poorly paid workers are frequently owed more than \$10,000 in claims through employment standards procedures. Workers in the lower wage scales cannot afford the cost of lawyers, they cannot afford to wait prolonged periods of time to get what they're entitled to and often they are afraid of reprisal and therefore do not pursue a claim until their employment with the violating employer has been discontinued. It is estimated that almost 90% of claims going through employment standards are made by

employees who have already terminated their employment with the employer.

The implementation of these maximums and minimums will undoubtedly encourage employers to violate the act. It's going to be cheaper for them to violate it and pay after than it will be to actually follow the terms of the act.

With respect to privatization of collections, we're opposed to the notion that it be privatized. Giving collectors the discretion to negotiate terms of settlement will drastically affect the amounts of money paid to employees by employers and could end up in a horse-trading kind of scenario where employees again will be forced to accept less than what they are entitled to and employers will be invited and encouraged to violate the act. It will be cheaper for them in the long run to violate it and negotiate a settlement at 75% or less instead of paying 100% of what is entitled.

The Chair: Mr McDonald, we've gone over the time, but if you'd like to make some concluding remarks I'll allow another minute or so.

Mr McDonald: Okay. I didn't know I was rattling on like that.

In conclusion, it's very apparent that our union and affiliated unions across the province are in opposition to Bill 49. We recognize that there need to be changes to the Employment Standards Act. We recognize that things have to be brought up to date and that the economy and recession have a place in making those changes, but the changes being presented today serve no purpose whatsoever and, if anything, will have a detrimental impact on employees in Ontario. Thank you.

The Chair: Thank you very much. We appreciate the time you took to make the presentation before us here this morning.

The clerk advises me that the United Steelworkers of America, Local 5297, have cancelled their presentation. The committee will stand in recess until 1:15.

The committee recessed from 1123 to 1317.

OTTAWA AND DISTRICT LABOUR COUNCIL

The Chair: I call the meeting back to order. Our first group this afternoon is the Ottawa and District Labour Council. Good afternoon, and welcome to the committee. Just as a reminder, we have 15 minutes for each group to divide as they see fit between a presentation or question and answer period.

Ms Naomi Gadbois: Thank you. Ladies and gentlemen, my name is Naomi Gadbois. I am the vice-president of the Ottawa and District Labour Council. The Ottawa and District Labour Council has 71 affiliated local unions representing approximately 44,000 members in Ottawa-Carleton region. These 44,000 members live, work, spend and vote in this community, as do our respective families.

The ODLC welcomes the opportunity to make a submission on the proposed "housekeeping" amendments to the Employment Standards Act contained in Bill 49. Our brief is longer than the time allotted to speak. We have submitted it and we encourage the committee to read it. We will restrict comments to three points perhaps not covered by other presenters this afternoon.

Our first issue is the red tape committee and the notion of public versus private interests. We understand that the so-called housekeeping amendments, which are in fact significant and substantive changes, grew out of the deliberations of the red tape committee. It is our further understanding that the overall labour/employment strategy of the red tape committee is to overhaul all labour/employment-related legislation with a view to altering current and historical views of what is appropriately considered a public interest and to transform these public interests into private concerns.

The public-versus-private split is evidenced in Bill 49 in myriad ways. Minimum standards are a public issue, yet the original Bill 49 relegated their negotiation to private parties. While this position is being dropped for the time being, there is no commitment to drop it altogether. Labour harmony is a public issue and the resolution of labour disputes should not be left only to private parties to work out.

The enforcement of minimum standards is a public issue, yet it will be placed in the hands of private collectors, with the government's control over the standard of collection limited and without public benefit of the collections that are successful.

Detering employers from breaching minimum standards is in the public interest, and Bill 49 does nothing to deter delinquent employers. From our perspective, Bill 49 provides an incentive to employers to break the law.

In short, the costs and consequences of employers failing to abide by minimum standards is a public cost and not a private matter. We oppose the recharacterization of these as private in nature.

Our second point concerns the impact on unionized employees. We are encouraged that the government has decided to drop subsection 4(3) from Bill 49 for the time being, but we are dismayed, however, that it has not been dropped altogether. Please refer to our paper for our view on what its devastating impact would be.

Bill 49 still requires unionized workers to enforce their minimum standard protections through the grievance and arbitration process. This foists the responsibility and costs of enforcing what ought to be considered a public right on to the union and the employer. While we assume that the Harris government is quite gleeful about increasing costs to unions, the Harris constituency — small business — will not be gleeful about these new costs. In addition, different arbitrators will deal with standards differently. Different results will have as much negative impact for competitive employers as they will have for unions and the workers they represent. Bill 49 will cost employers a lot more time and money.

Third, the impact on non-unionized employees: The cumulative impact of the changes regarding the new limitation periods, election on forum, caps on claims and privatization of enforcement have the impact of discouraging employers from complying with the act.

Consider the following typical example: We have an employee who is a salesperson with over 20 years of service. As a salesperson, her remuneration was structured as a low base salary of \$25,000 per year, plus bonuses paid quarterly. The bonuses are based on a percentage of sales. For the past five years, her bonuses

have ranged between \$25,000 and \$30,000 per year, for a total annual income of \$50,000 to \$55,000. She has also worked a huge amount of overtime because she covers the office when the manager is away and spends a lot of time on the road. The overtime has been banked and she has over 100 hours of banked overtime for the last quarter, valued at \$2,000. Her travel expenses are to be reimbursed, which include the car lease, gas, mileage, hotels and meals, all valued at \$2,500 for the last quarter.

Her employer approaches her in January and tells her that it is having a bit of a cash crunch and therefore cannot make the \$6,000 bonus payment payable for the quarter ending last December, but thinks it will be in a position to do so in March. The employee is dismayed, but she says she will continue working. By the end of March, she calculates that her January to March bonus is \$5,500. Together with the \$6,000 arrears for October to December bonus, the banked overtime of \$2,000 and the outstanding travel expense of \$2,500, she is owed \$16,000 in arrears alone. She goes to the employer and makes a request that the outstanding \$16,000 be paid to her within a reasonable time. The employer gets angry and fires her, claiming that she is guilty of insubordination and that he has therefore lost his trust in her. The employer does not pay her the \$16,000 in arrears, nor does he pay her the amount he owes under the termination and severance provisions of the act.

She has no savings because the employer had been in arrears and her income for the last three months had gone down as a result. The Ontario legal aid plan no longer funds any wrongful dismissal cases and she has been told by two lawyers that they will not meet with her unless she pays a \$5,000 retainer up front. She is denied UIC because the employer has alleged that it fired her for cause. She has been told by social services that there will be a three-month waiting period for social assistance because the employer has alleged cause. She talks to a friend who is a law student, who tells her to file a complaint under the Employment Standards Act. No one draws her attention to section 64.3, so she does not know that by filing a complaint she has just given up her common law civil claim for damages in lieu of notice in excess of those prescribed in the act.

Her claim for arrears in wages and overtime is \$16,000. In addition to the arrears, she has a claim for damages in lieu of proper notice, which at common law would be in the \$75,000 range and which, under the combined termination and severance provisions of the Employment Standards Act, total \$25,000. Her job search has been hampered by her employer, who tells prospective employers that she was fired because she cannot be trusted and is litigious. The employment standards officer investigates the complaint and ultimately makes an order that the employer pay \$10,000 for the arrears. She loses the \$6,000 because of the cap on arrears in subsection 55(1.3) and the employer is also ordered to pay the termination and severance payment of \$25,000.

The employer refuses to pay, so two years later the director appoints a private collector. The employer tells the collector that the most it can pay will be \$20,000, including the administrative and collection fees. Otherwise, it will declare bankruptcy and will not be liable to offences or any other penalties thanks to the amendments

in Bill 7. The collector tells the employee that the maximum she can get is \$20,000. She is now completely desperate and says she will take it. Pursuant to subsections 73.0.2(2) and (7), the private collector and the director take \$4,500 for administration and collection fees and remit the remaining \$15,500, minus income tax, UIC and CPP, to the employee.

The employer has saved \$71,000, plus the costs of legal representation and a potential award of costs against it by a court. The collection agency made a profit after expenses of \$3,000, because it took only three phone calls to resolve the matter, but the ministry didn't have the time or resources to monitor or audit the private collector. Unfortunately, the employee has lost \$73,000. She may have lost her house or apartment in the time it took to resolve the matter. She may have lost her relationship. She has definitely lost sleep and self-esteem and may or may not have had the ability to get back into the active workforce. The taxpayers have lost tax revenue from her in the range of \$20,000 and the defraying of costs of about \$4,000 that went to the private collector. Small businesses in the employee's community have lost her buying power.

A similarly situated employee who was able to retain a lawyer may have recovered the whole amount. A similarly situated employee who had a different collection agency assigned to the case may have recovered the whole amount claimed under the act. A similarly situated unionized employee would have pursued the matter by way of grievance and could have recovered the whole amount, albeit at the employer's and the union's expense.

But in 1993-94 over 20,000 employment standards complaints were made but only 27 prosecutions of employers were initiated, so the employer in this example can probably feel fairly secure that he will not be prosecuted and there will be no consequence for breaking the law. In the intervening years he has had the full use of the 20,000 bucks he ultimately had to pay out.

Bill 49 does not benefit employees or the public in general and it does nothing to assist the provincial debt or the provincial economy. Quite the contrary.

I'm sorry, gentlemen, but I took the time to come and I would appreciate your attention.

Bill 49, and Bill 7, have been useful in unifying the labour movement. Bill 49 should make it easier for unions to organize unrepresented employees, as they are largely unaware that their rights to minimum standards are being stripped away by the Harris government. Bill 49 enhances the union's appeal to both represented and unrepresented workers. But Bill 49 does not help employees or the public, and is this what you intended? We are the voice of 44,000 voters and their families and we thank you.

The Chair: Thank you. That allows us three minutes, one minute per caucus, and the questioning this time will commence with the official opposition.

1330

Mr Hoy: Thank you very much for your presentation. It's a graphic example of how things could go wrong under Bill 49 as it pertains to this particular employee.

It was suggested earlier this morning, and I think many of us would have to agree with this statement, that a lot

of employers have open lines of communication and discuss things with their employees, such as it started out at the beginning of this example where the employer said, "I'm a little bit behind." The employee says, "All right. I'll wait a little bit and hopefully things will work out." That's an open line of communication. But things went on to be delayed and payments were delayed. I think your concern mostly, through this example, is the enforcement.

Ms Gadbois: Absolutely, yes.

Mr Hoy: The government is saying they can't collect very many of these moneys, less than 25%. Now they're saying that in certain situations under the private collector 75% would be better. How do you react to that prescription for remedy?

Ms Gadbois: It seems to me, gentlemen, that the government has absolutely no problem collecting its taxes. If you don't pay your taxes, there are all kinds of penalties that devolve upon you. If collecting money from employers that is owed to workers were an issue of concern to the government, they would simply write legislation that would make it possible to do so. They do it in other areas.

Mr Christopherson: Naomi, thank you for your presentation. That's probably the best illustration we've had of taking a pretty commonplace situation and walking through the various doors of the new legislation and showing where people will arrive at. I think it's fair to say that there are much scarier examples of people who are a lot more vulnerable who don't even start out with some of the benefits that this worker might in terms of facing those kinds of problems. I'd be interested to hear from the government. If they want to challenge that this isn't a real possibility, I'd be interested to hear them make that challenge.

Assuming that they can't or certainly won't be able to do it effectively, I would also draw to your attention that the Nepean Chamber of Commerce came in this morning and said: "The reduction in time to file a complaint, from two years to six months, allows disagreements to be dealt with in a timely manner. This benefits both workplace parties." Further, the Gloucester Chamber of Commerce came in and said the bill "continues to protect minimum employment standards for workers."

I should say that neither have the government members yet admitted that this bill takes away the rights of workers. They still maintain in the face of all the evidence that you and others have brought forward all across Ontario — and I can tell you your thinking is consistent with representatives of working people, organized and unorganized, all across this province. They still will not admit to the fact that bottom-line rights of workers are being taken away. Any further thoughts you would have on the fact that they're continuing to defend, and you will this afternoon hear the government defend, that this is not taking away minimum standards?

The Chair: Thank you, Mr Christopherson. Mr Baird.

Mr Christopherson: Normally you offer a chance for a brief response.

The Chair: Well, you were already at two and a half minutes for your one minute.

Mr Garry J. Guzzo (Ottawa-Rideau): You've got to learn to cut those questions.

Ms Gadbois: I'll simply agree with Mr Christopherson as my response.

The Chair: Super. Mr Barrett?

Mr Barrett: Ms Gadbois, thank you for your presentation on behalf of the Ottawa and District Labour Council. You mentioned the deliberations of the red tape committee and some strategy behind this. Very simply the strategy is no more than to eliminate red tape completely. There's really no secondary policy initiative. We're not going to leave in any silly rules or regulations to try and achieve some other goal. That's not the reason.

Our reason for eliminating red tape is to eliminate as many barriers to economic activity or barriers to industrial relations or creating jobs in this province as possible. Red tape itself is really an indirect tax on activity and on people's resources, so anything that's unwieldy or doesn't fit or is there for no good reason will be history.

Ms Gadbois: I understand what you're saying and —

Mr Barrett: We're looking for good reasons to leave things in or take them out. That's why we're —

Ms Gadbois: Sure. The thing is in the definition of what red tape and silly regulations do, and for the most part what they do is protect people who have absolutely no power in the workplace against their employers, sir. To remove those barriers, as you call them, basically means to have open season on workers in this country in their workplaces, as we had 100 years ago. I guess it depends on your definition of what those things do, sir.

The Chair: Thank you for taking the time to make a presentation before us here today. We appreciate it.

CCS CANADA LTD

The Chair: That leads us to CCS Canada Ltd. Good afternoon. Welcome to the committee. We have 15 minutes for you to use and divide as you see fit.

Mr Kevin McGrath: Thank you, committee members. My name is Kevin McGrath and I'm appearing in two capacities: (1) as an independent businessperson and (2) as a spokesman for CCS Canada Ltd.

CCS Canada Ltd is a collection agency for international insurance companies in Canada. I am an agent in Small Claims Court and on a daily basis I deal with businesses, employers and persons who owe money, and I know them all very well. These are the people who are also involved at one end or the other of the Employment Standards Act. The figures have since been adjusted, I understand, but the last information I had was that two thirds of the orders made by the department were not paid, and there's a tremendous cost there. It does not send a very punitive message to the employers who flout the law and cheat their employees.

There are two reasons for this high ratio of unpaid claims: First, there is too much time given to the type of employer who may be a cheat by the complaint presented; second, up to now the department has not employed professional collectors from the start.

Let us look at the first cause. The employer who is the subject of the complaint by an employee is either a cheat or because of necessity is cutting every cost possible in order to survive. In either case, time is working against the creditor, either the victim-employee or the department

of labour and whoever may be associated with them. Under Bill 49, the time within which complaints must be filed has improved to six months, but even this is too long. It should be shortened to a period of 60 days from the time of the offence or the discovery of the offence.

If the employer has not corrected the problem with the employee within 60 days, it is not going to be corrected. The sooner the employee recognizes this fact, the better off he or she is. The shorter time creates an urgency in seeing that the claim is filed early. Filing early gives the standards officer a better chance to stop this offence happening to others and to effect recovery. It is not hard for a slick talker to persuade the victim to wait a little longer until the matter is fixed up. It does not get fixed up; it only gets worse. The cheats are buying time.

Whether the employer is honest or a cheat, they continue to cultivate the ill-gotten gains at a price to the victim. Everyone must understand the urgency of filing the claim promptly, and putting an early deadline on it is the way to create this urgency. The employer knows immediate settlement cannot be delayed. The employee, who cannot afford to forfeit the money, knows it is now or never to get things done quickly. The standards officer has a better opportunity to solve the problem. It also reduces the amount payable from the employee wage protection fund.

To give two years for an order or a refusal to issue an order is unfair to the employer and it's unfair to the employee. It is an unnecessary delay. I think Mr Guzzo would agree with me that justice delayed is justice denied.

Mr Grandmaître: He won't agree.

Mr McGrath: Well, I'll ask him after.

If an offence against the act is a crime, then crime prevention should commence as soon as possible. It only gets worse if no decision needs to be made for two years. Human nature is such that decisions are made, at most times, only against a deadline and not before. It is not fair to the employee to wait up to two years, if the money is coming from the employee wage protection fund, or for an order to be made. Certainly the payment will not be made while the investigation is going on. It is not fair to the employer to have an investigation hanging over his head for two years. Get it finalized as soon as possible.

1340 While an investigation is being carried on and the order may be pending, the employer is tied up for finance or is forced to settle an unjust claim. The tension suffered by an innocent employer will drain attention from more productive endeavours and planning. The only person these delays help are the people who are trying to avoid the law.

Ninety days, not two years, should be sufficient time to investigate and make a decision as to the issuing or withholding of an order. This would not interfere with the other provisions of the act where there is mention of a two-year period. Everyone, particularly those who would not have occasion to use it regularly, must constantly be reminded of the time frames. The collection of debts is a highly specialized profession. Collecting debts is an exacting job requiring focus and determination. The psychology of debtor motivation to pay is a serious study.

Everyone does not have this talent. The staff who administer the Employment Standards Act do not have the time to effect the collections, unless they have taken the many courses offered to collectors by trade associations involved in the collection of debts, and they would not have the expertise to collect against the many other professional collectors who are attempting to collect from the same debtor.

An independent collection agency will return more money faster. They have the ability and the technical knowhow to do the job better at a predetermined, fixed price, thereby effecting a saving for the client. Remember, two thirds of the orders are uncollected, and that is a tremendous cost.

There are other points I would be pleased to discuss; however, I want to allow time for questions in this brief time allowed to me for this presentation.

The Chair: Thank you very much. That's six minutes, so we have three minutes per caucus for questioning. The questioning will commence with the third party.

Mr Christopherson: Do you consider yourself an expert in your field?

Mr McGrath: Yes.

Mr Christopherson: Do you consider yourself a professional?

Mr McGrath: Yes.

Mr Christopherson: Would you stop being either one of those if you worked for the government instead of your own corporation?

Mr McGrath: I might not have the same motivation.

Mr Christopherson: But you said you were a professional. A professional does things for reasons other than monetary remuneration.

I would like to ask you another question. You've talked about the fact that you thought six months was too long, that you'd like to move it to 60 days. Are you aware — and I'm suggesting you may not be; that's why I'm raising this — that it's not unusual for a very vulnerable employee working for a bad boss — not that they all are — who's being ripped off but who for a long period of time may not know they're being ripped off — then they become aware of it through one means or another but they're afraid to file a complaint because they'll be fired and they know it, and it takes them time to secure another job. Ninety percent of all claims are placed after someone has left the employment of a bad boss. The current law allows them to go back at least two years and collect back pay they're owed. Your suggestion would further deny them money they're owed.

Mr McGrath: I don't think it would. And I say that because in my brief I said, "or as soon as it comes to their attention"; "60 days, from the time of the offence or from the time it comes to the attention of the offended."

Mr Christopherson: So are you saying they should be able to go back two years and collect the money they're owed, as the law now provides?

Mr McGrath: I think they should perhaps be able to even go back further. For example, if someone was denied money for an extended period of time and it just dawned on them or they just had the benefit of counsel, or the government took out newspaper ads and radio ads to let them know what their rights are, if it comes to their

attention at that time, they should be able to go back any period of time.

Mr Christopherson: Very good answer, and I appreciate that very much. I suggest that's exactly the kind of professional expertise, motivated by the right reasons, which is to help vulnerable people who are being ripped off, that the government has an obligation to provide. I'd sure like to see the government hire someone like you, with those kinds of qualifications and moral standards, out there going after these bad bosses.

Mr McGrath: Thank you. I'll give you my card.

Mr Guzzo: Consider it done.

Mr Christopherson: Hansard got that, I hope.

Mr Baird: Thank you very much for your presentation. My colleague from Hamilton Centre mentioned that the laws now allow workers to go back two years and collect back pay that they're owed. It becomes an issue of the principle of rights, which I think we all share, but it becomes separated from reality. The current law does not really allow people to go back two years and collect what they're owed. With the administration of the current law, people are only seeing 25 cents on the dollar being collected, so that is a falsehood. We are not seeing workers go back two years and collect what they're owed, because they're not collecting it. The current process isn't working. That's one of the reasons we want to go to private collection agencies, because we in government obviously don't do a very good job about that. The previous speaker said, "Just strengthen the legislation." I say, tell us how to strengthen it. Give me specific examples, I've said to previous speakers, because obviously we can't find them.

The previous government made a valiant attempt for five years and they couldn't find them. The Liberals haven't been able to find them. We simply have been proven, all parties, ineffective at collecting more than 25%. I think at some point in this debate we've got to say that the principle of rights is so paramount —

Mr Christopherson: Why not take away the whole protection, John? Then you'll have 100% success.

Mr Baird: — the principle of rights has become so separated from reality that we'd rather keep the principle of rights. It doesn't matter if people ever collect them, but in principle it's great. That's why we want to see these go to private collection agencies, because I can't possibly see how you folks could do a worse job than all three parties have done for workers in this province.

Mr McGrath: That's a very nice vote of confidence. Thank you.

Mr Baird: You've got two out of two so far. That's the first thing this guy and I have agreed on since the hearings.

Mr McGrath: What I want to bring up again is the amount of time. The guys who are out there who are going to cheat — let's pick a real easy victim. Would you say telemarketers fall into a higher chance of offending rights? They're not even covered in the act, believe it or not.

Mr Baird: Maybe they should be.

Mr McGrath: They should be; I agree. In any event, whoever the offender is, generally they're running on a

shoestring or they're running with the intention of perhaps taking advantage of someone who doesn't know their rights. If we get the order in 60 days, the guy is hopefully still in business. Hopefully we'll know whom he is working for, we'll know where he is banking, we'll seize that bank account and we'll seize his contract if he's being subcontracted to raise things for other people.

Mr Baird: I just have one quick last question. Do you have an easier time obtaining results for your clients if the debt is less than six months old, or if it's more than two years?

Mr McGrath: Every day when an account is unpaid is another excuse not to pay it.

Mr Grandmaitre: We all agree, I think, that the present government and previous governments have done a very poor job as far as collecting these dollars is concerned. Without having seen the enforcement legislation, you say you can do a better job than the previous government. My question to you is, what is your cost on collecting \$1,000, for instance, or per \$1,000? What would be your cost or the cost to the employee trying to recover?

Mr McGrath: Those are two separate questions.

Mr Grandmaitre: Okay, answer (a) and then (b).

Mr McGrath: Well, I'm not necessarily prepared to answer (a), because I didn't come prepared to answer (a), but the generally agreed-upon commission rate is in the neighbourhood — well, the government just did a bidding process and I bid on that, for the \$300 million in accounts. I would think that for these types of accounts, for the orders that would be given in 60 days, if the collection agency were to retain as its share 25% or 30%, you would find that most of the orders would be collected.

I would also submit that price is not always the criterion. If the government is going to start selecting the collection agencies, I wouldn't do it on price, because you get exactly what you pay for.

Mr Grandmaitre: I realize this.

Mr McGrath: If I may add to that, there are agencies out there that will do it for a nickel, or for 5%, but they're not going to effect recovery, because they're just going to be creamed. If you want the accounts collected, you give them to people who are trained collectors and who have a high recovery ratio.

Mr Grandmaitre: Answer me this question: How about a new case? We're talking about what's being owed right now. Let's say that on your desk tomorrow morning you get a new claim. What will be that charge or that fee or that commission or whatever?

Mr McGrath: First of all, I wouldn't charge anybody anything unless I collected the money.

Mr Grandmaitre: Yes, I realize this. We all know this. A collection agency is a collection agency. They get a fee on what they collect. I'm asking you, what is your fee on whatever dollars you collect?

Mr McGrath: It would average about 32% for my clients at present.

The Chair: Thank you, Mr McGrath. We appreciate your taking the time to make a presentation before us.

Mr McGrath: Thank you for listening.

1350

CANADIAN UNION OF PUBLIC EMPLOYEES
DISTRICT COUNCIL — OTTAWA-CARLETON

The Chair: That leads us now to the Canadian Union of Public Employees, District Council — Ottawa-Carleton. Good afternoon and welcome to the committee.

Mr Steve Sanderson: My name is Steve Sanderson. I'm the president of the Ottawa-Carleton CUPE district council, representing 5,000 members in the Ottawa-Carleton area.

I want to just tell you a couple of things before I start. These types of sessions always let me think about a number of things that I think are important to me as an individual in this province, and also as an individual standing before this committee to attempt to help it find a way through these dilemmas.

Today, I thought back to the time when I was 14 years of age and I was working in a store called Zellers. I worked 54 hours a week without overtime and I was lucky to get Wednesday afternoons off for a couple of hours. I made \$1.25 an hour. If I got out of line with anybody, if I spoke up, if I said anything — in those days, I was in charge of all the shipping and receiving; I was in charge of making sure everything was in the kitchen; I had to take care of all the animals in the store; I had to make up all the signs; I had to open the store; I had to go to the manager, to the bank, and bring in the deposits for the week. The list went on and on. I made \$1.25 an hour, and I wasn't able to say a word about it. Nobody in that store talked to anybody else about anything because they were absolutely freaked out about saying things for fear that they would lose their jobs.

That was just something that came to me, because I remember that experience of working. As I grew up, I remember the changes that came under employment standards and how people were able to benefit from that and be treated with dignity and respect.

The other thing I'd like to say to you is that in my position as a person who is working in this province, as an employee of an organization — I work with an organization called the Ottawa-Carleton Association for Persons with Developmental Disabilities. I help and assist people with developmental disabilities become employed in gainful jobs in this community and I've been doing that for the last six years. I think it's important to note that some of the things that are being said in Ms Witmer's last statements were about helping those people who need help the most. I guess what I could say to you — and that's my experience, not yours — is that a number of the things that will, I think, come forward in this bill will make it much more difficult for those people who are developmentally disabled to be able to get gainful employment in our community. It will restrict them and it will put them at the back of the line. So that's another thing I think you should take into consideration when looking at what is going to be coming out of this bill.

I want to also make my presentation a bit different from the other presentations that I've heard and that I've been able to glean from other groups that have presented. I know the major issues before us are the claims: the

period of time for claims investigations, the limits on the claims, the role of enforcement of the government with respect to that issue and the use of private collection agencies, which was just brought to our attention by the previous speaker. I think you're going to hear an awful lot about that stuff over the next couple of weeks — obviously not this particular group, but the group that is travelling throughout the province — but I feel that in some way I don't specifically want to address those issues. What I want to address is what I feel is at the root of the changes and what I believe the role of the government should be in this type of endeavour with respect to ESA, or the death of ESA.

One of the comments I do want to make, though, at this particular point is that although there will be changes coming in the fall that will be even more extreme, the Honourable Ms Witmer indicated that this is a housekeeping bill, and I would just like to suggest to you that the only real things I see as housekeeping are issues around vacation leave and maternity leave. Those seem to be the only ones I really can find. I think the others are really in the direction of a major revamp and a radical swing in direction which is going to be in favour of employers.

I want to also start by talking about what I believe to be a law and what the importance of a law is. I suggest to you that I cannot find any laws on record in the province of Ontario for people to be caring, concerned employers. I did not find any laws on employers being too generous with employees. In neither case did I find those types of laws.

I start by saying that because I want to look at the idea of what a law is all about and why people create laws and what the purpose of laws is. I think if we look quite carefully, laws traditionally or initially were to preserve and protect those who had against those who had not. I think the second way that laws were created was because there were things that happened in societies around the world and people said they would not regulate themselves, and somebody had to take the responsibility of regulating so that there would be fairness and justice for all.

In light of that, and in this case if we're looking at employment standards, the law has been created as a result not of employees but as a result of what employers have done traditionally with employees. The cases are legend and the stories are legend about what has happened with not only males but women and children working in unacceptable, extraordinary environments for lengthy periods of the day without any recourse to health and safety, and the list of litany of those terrible things goes on. The rules allow people to stand up and say, "I have something that I can say is mine and I can stand for it and there is somebody who's going to help me with it."

I think it is also given that laws were created and laws are still in place because if the laws were not there, then we have that whole history of before the creation of employment standards as a mishmash of laws that required the creation of the Employment Standards Act because the employers would not regulate themselves. Thank goodness for that creation and thank goodness for the wisdom of the people who were in government at the time.

I believe too in the following statements, and this is something that I hold very close to my heart: that governments and democracies are elected by the people to take care of the welfare of all of the citizens, and not just some of those citizens. I also believe that government has an ethical and moral responsibility to be fair and just and principled with all of those citizens. When a government favours one class or group of citizens, it loses its moral authority, and when it gives up its responsibility about regulating and enforcing laws, it becomes the puppet of the agent that is controlling it. I don't have to name what I think that control agent is.

With the Employment Standards Act, the changes that we're looking at here, I believe the government is quickly moving in that direction. Just for the sake of analogy, I suggest to you that we have nomenclatures that are put in place. I know that PC stands for Progressive Conservative, but more and more I see it as progressive corporation. That scares me, because the government seems to be going in that direction, seeing government as business. It leaves people in this particular case, under Bill 49, as a result of the exclusions of the things that relate to organized labour, outside of it. It leaves the unorganized labour force defenceless.

I suggest to you also that if you look at who is in the unorganized labour force, a large percentage of them are women. I believe they have been downtrodden and taken advantage of, and it's just more recently that efforts have been made to give them an equal opportunity. That, again, I think is going to be under attack for women. Then, of course, there's the preparation for the attack on organized labour that will come in the fall.

I've heard through the minister's comments once again that there is talk about minimum standards, and I know, in looking at this and the things that we will be looking at in the fall with respect to a complete revamping of the bill, that the concept of standards will in effect disappear. You cannot have standards if everybody has a different set that they consider to be that. In the end, you'll have this hodgepodge of things which will make it even more difficult for anybody, let alone organized labour. If you look at unorganized labour, who will represent them? In effect, who will be speaking for them at these hearings? If there's no body that represents them, who will come forward?

1400

I know that the comments I have made you'll say — and you could easily say that, and so be it if that's the case — “Who is this guy and what nerve does he have to say these things?” I want to suggest to you just a couple of things on that topic, if I could. I suppose if I could be so bold as to just go on with this particular part of my report. I've looked at a couple of things that I have said to you already. Some examples — me, I'm nobody, I have nothing to say as far as some of you may be concerned, but I would like to look at some of the things that are being said about how economic development will help everybody in this report and it will better lifestyles.

There was an employment outlook report that was put together by the Organization for Economic Co-operation and Development and it says it ranks Canada near the top among western countries in terms of full-time workers in

low-paid jobs. So more jobs doesn't necessarily mean a better standard of life for those people who live in our province. The 25% of Canadians who are full-time workers receive less than two thirds of its median earnings, and that again is something that does not help Canadians. Furthermore, Canada has one of the highest rates of child poverty in the industrialized world. There's a tremendous link between the chronically high unemployment that we have, the large-scale poverty that is presently among us and that is a disgrace for Ontario to have to say that and a grossly unequal distribution of income. That's not me, that's a fairly representative, important body.

The UN Human Development Report — this is with respect to the balance of wealth and power — has indicated that wealth in the world of the 358 billionaires is equal to a combined income of the poorest 45% of the world's population. That's 2.3 billion people in this world. By 1991 statistics, 81% of the world's population received only 15% of its income. So when you talk about distribution of wealth and people saying they're really having a hard time and they can't manage unless the rules are changed, then I suggest to you that there is a purpose behind all of this for them and that the key to growth is investment in education.

We see also again the complex situation now where people are having a harder time gaining access to education. One year more of education represents an increase in the gross domestic product of 9%, and better nutrition — again, talking about poverty here, talking about people working — the statistic in 1976, it took 41 hours of work by one individual in the family to be able to take care of that family. Now it takes something like 75 hours of work by the two individuals working, and obviously the standards and the costs and the minimum wages being what they are with respect to the cost of living, do not allow people to do anything but to survive.

Another report, not me speaking of this: In the prestigious US journal *Foreign Affairs* — this is an article last year by Ethan Kapstein, who is the director of studies at the Council on Foreign Relations in New York. He was talking about the singleminded priority for deficit reduction matched with that tight monetary policy of governments. He indicated in this blue ribbon establishment publication that, “Just when working people need the nation state as a buffer from the world economy, it is abandoning them.” A further quote: “The spread of this dogma of restructuring fiscal policy is undermining the bargain struck with workers in every industrial nation,” and that's the bargain struck 50 years ago right across the board with people indicating that there had to be change and there had to be a working together of people, of government and of business, and finally, that these tight monetary and fiscal policies have favoured financial interests at the expense of workers and have created an international renter class. In other words, people are forced to live in that way. So not me, another body that has credibility, blue-ribbon publication in the United States.

I guess finally, an individual that maybe people should be listening to more than anybody else is Henry Mintzberg, who is a professor at McGill University and at a

prestigious European business school, who was also published in this article in the Harvard Business Review — I guess that could not be seen in any way as being a “left-wing propaganda leaflet” — indicating that — let me just say to you that this man is, if you don’t know him, a world-renowned thinker and writer in management circles. There have been many things said about him. Basically, what he is arguing in this article, and it has been well publicized, is that government is not a company and cannot be managed as if it were a corporation.

Another interesting quote from Dr Mintzberg. It says: “All this knee-jerk stuff denies decades of working things out very carefully as to what government should do and business should do. They” — government — “throw it all to the wind because you have a bunch of” — that’s his quote — “idiot economists who don’t know anything practical.”

He goes on to say other things here, that, for example, the Mike Harris Conservative government, for evidence that business-style management does not serve the citizens’ government, becomes hardened. It has more concern with selling lottery tickets than it has concern for people who are standing on the streets. It’s the whole business view of the toughest surviving. It’s all the value system coming into government, and Mike Harris does it with a vengeance. Mintzberg goes on to say that this type of attitude plays into the hands of those who “have a very callous view of society.”

The Chair: Excuse me, Mr Sanderson. You’re already well over your time. If you can conclude in a sentence or two, I’d appreciate it.

Mr Sanderson: Yes, I can. If I could just conclude by saying that — Franklin Delano Roosevelt — to have a strong nation, you have to have a healthy nation, and we’ve forgotten those things that are very important to bring people together so that they can live a reasonable, decent life. I really believe there are problems with this bill, and it will affect many, many thousands, if not tens of thousands of people in this province.

I’m very sorry for going over my time limit.

The Chair: Thank you, Mr Sanderson. We appreciate your taking the time to make a presentation before us here today.

EMOND HARNDEN

The Chair: That leads us now to our next presentation. I think the agenda is slightly incorrect. The actual title was Emond Harnden law firm, Mr Andrew Tremayne. Good afternoon. Welcome to the committee.

Mr Andrew Tremayne: Good afternoon, Mr Chairman.

The Chair: Again, we have 15 minutes for you to use as you see fit.

Mr Tremayne: My name is Andrew Tremayne, and I’m an associate with the law firm of Emond Harnden. Emond Harnden is a law firm which advises employers with respect to labour and employment issues. My associates and I restrict our practice to this area, and we are the largest firm of its kind of eastern Ontario.

Naturally, the changes which are contemplated to the Employment Standards Act by Bill 49 are of great

interest to my associates and I, and also, more importantly I think, to our clients.

In general, we support the proposed changes and encourage this committee to recommend speedy passage of this bill, but we do have a few specific submissions for this committee with respect to a couple of particular areas. There are four areas I’d like to touch on: first of all, the amendments which would reduce parallel claims and forum shopping; secondly, the amendments which would ensure that complaints are made in a timely fashion and which would reduce retroactive recovery; thirdly, the increase in the time limit for requesting review of a decision; and fourth and finally, those aspects of the bill which clarify portions of the pregnancy and parental leave provisions.

First of all, we advise employers whose workforces are both unionized and non-unionized, and in both cases the employers at present face the possibility of having to litigate ESA-based claims in more than one forum, either before an employment standards officer and in the courts in the case of non-unionized employees, or before an employment standards officer and an arbitrator. In either case, our clients face the prospect of greatly increased and, in our view, unnecessary expense in defending themselves twice.

First, with respect to the civil claims — as this committee is probably aware, courts have recently begun to apply a principle of issue estoppel to proceedings before them in situations where an employee has made a successful complaint pursuant to the Employment Standards Act. Many of our clients are alarmed to discover that a determination by an employment standards officer that an employee has been terminated without cause is entitled to termination and severance pay pursuant to the ESA, and can have that decision form the basis for a successful wrongful dismissal claim where the potential damages run up to 24 months of pay. In our view, the revisions to the act which are contemplated under section 19, which would eliminate that possibility, should be supported, and in our respectful submission, no one will be denied the right to make a claim. In fact, what is happening, in our view, is the claims are going to be channelled into the most appropriate forum, either the courts or the employment standards branch.

1410

With respect to the companion piece, section 20, it’s in that area where we see that the provisions of the ESA will be read into a collective agreement and an arbitrator will be able to enforce those provisions. In our respectful submission, that section does require some additional clarification. First of all, with respect to time limits: Would the time limits of a collective agreement for the filing of a grievance apply with respect to an ESA-based claim? We feel that should be clarified.

Secondly, would an arbitrator have the enhanced powers, particularly those investigatory powers which are contemplated under section 29 of the bill, in enforcing a deemed breach of the collective agreement? At the moment, arbitrators act more in a mediator/decision-making role rather than as an investigator. So in our view, some thought should be given to the specific provisions of the Employment Standards Act as amended

by Bill 49 in terms of which specific provisions of the act will be enforced through the collective agreement.

Finally, the issue with respect to the administrative aspect, again in terms of limitation for recovery period, that should be clarified in terms of whether the collective agreement standard applies or whether the Employment Standards Act as amended by Bill 49 applies.

With respect to the provisions which would ensure that complaints are made in a more timely fashion, we heartily support those provisions. Many of our clients express a great deal of frustration with what seems to be claims being filed long after the ability to investigate them properly and, in effect, many instances to resolve them have passed, so we support heartily the amendments which would reduce that time period.

We also support the provisions of Bill 49 which would increase the time limit for the filing of an application for review of an officer's decision from 15 to 45 days. As the committee knows, employers are required to first comply with an order to pay before they are permitted to file for review. In our respectful submission, the committee should turn its mind to that provision of the act. A reasonable compromise might be the requirement to pay a portion of an order to pay, because for many employers, an order to pay can be prohibitively expensive, and in our view, the enforcement proceedings should be separate from the determination of the rights and whether or not there has been a breach. Nevertheless, the extension of time from 15 to 45 days will I think allow many employers, who in many situations have to seek legal advice and do seek legal advice for the first time when a decision is rendered against them, to more properly inform themselves and, if necessary, to secure the funds necessary to comply with the order to pay in order to initiate the review process.

The final area I'd like to touch on is those proposals which seek to amend the Employment Standards Act to state clearly that pregnancy or parental leave should be included in the calculation of service and seniority. In our respectful submission, that is a welcome clarification of a hitherto unclear portion of the act. We would, however, be concerned about the transition effects flowing from that if all provisions of the Employment Standards Act are to be enforceable pursuant to a collective agreement and to become, in a sense, deemed provisions of a collective agreement. Many employers have governed themselves in previous years based on decisions of employment standards officers and/or arbitrators with respect to the interpretation of that provision. We would urge the committee to consider reading those provisions into collective agreements when they come up for renewal.

We would, in addition, urge the committee to look carefully at what is presently section 44 of the Employment Standards Act. This provision provides that an employer cannot discriminate against an employee, can't intimidate, suspend, lay off, dismiss an employee because an employee is or will be taking parental or pregnancy leave. The word "because" there is important. As this committee may be aware, there are conflicting decisions among employment standards officers as to the significance of the word "because." Many officers have in

effect read that word out of that provision, thus giving employees in effect an absolute protection or form of superseniority against any layoff or dismissal, discipline or suspension, whether or not it is motivated by that employee's expression of interest in or genuine taking of pregnancy or parental leave. In other words, some officers have interpreted that as meaning once an employee expresses an interest in taking leave or is taking leave, he or she is immune from layoff, dismissal or other matters.

We conclude the substance of our submission. I hope I've been able to be of some assistance to the committee. Again, I haven't touched on all the areas; we've touched only on those which we see as the most significant ones in terms of our clients and our clients' needs. I'd be pleased to respond to any questions.

The Acting Chair (Mr Ted Chudleigh): Thank you very much, Mr Tremayne. We have a little under two minutes for each caucus.

Mr Baird: Thank you very much for your presentation this afternoon. One of the issues that has come up — I've mentioned this on a few occasions. We had a businessperson come before the committee in Hamilton and say, "Just tell me what you want me to do and I'll do it, and be clear about it." He expressed a significant amount of frustration in the ambiguity and lack of clarity in the act. That's why this process is a two-stage process, Bill 49 being the first stage, and then a comprehensive review over the next four to eight months on the overall act.

What other problems or issues could you tell the committee about where there's a lack of clarity, and how has that led to misunderstandings and in the end to violations, potentially, under the act?

Mr Tremayne: In our experience, it's very difficult to generalize in terms of employers. Obviously there are employers over a wide spectrum of sophistication. Many of them are very large and are very well informed about the act and know intimately all of its ins and outs and keep abreast of the interpretations of employment standards officers. But then there are the employers who are often smaller businesses whose awareness is extremely general.

A good example of that is the distinction that's made in the act between termination pay and severance pay. As you know, everyone with a minimum of qualifications is entitled to a notice period. In addition to that, for certain employees who have been employed for a longer period of time and for employers of a certain size, they are also entitled to severance pay. Many employers are unaware of that.

1420

In addition, many employers are also unaware that there is a common-law entitlement to file a claim for unjust dismissal and seek damages in a far greater amount than that which can be claimed under the act.

How the branch might go about publicizing those issues, again, I wouldn't have any concrete suggestions. Suffice it to say that of all the other areas, that is an area which I think is not, at first blush in any event, if someone does take the time to read the act, immediately clear.

Generally, everyone seems to understand how vacation provisions work, how holiday entitlements are accrued,

all of those sorts of things. Pregnancy and parental leave is a complicated one for one of the reasons which I've mentioned. I would also urge in future that if further amendments are contemplated, the successor employer provisions are troublesome for reasons which I won't go into. But those are other areas that the committee or the government at another time could certainly take a cold, hard look at both in terms of clarifying the substance and possibly also in terms of an education program and informing employers of their obligations.

Mr Hoy: Good afternoon and thank you for your presentation. We've had employers and employees request clarification of the arbitration procedure and the time lines, and as well whether a collective agreement or those provisions in the act take place. So it's good to actually have that brought up by someone in your profession as well to kind of reinforce their concerns, you being a lawyer.

I would like you to clarify something for me, because I'm not sure that I understood what you said. You were talking about the review process and the government's wish to go from 15 days to 45 days for an appeal process, as some might call it. Did you say the employer should put up a portion of the money during that time? I didn't understand what you were suggesting.

Mr Tremayne: At the moment, under our interpretation of the act, if there's an order to pay, an employer is in effect required to comply with that before he or she is permitted to apply for a review. In other words, you have to satisfy that order before you are permitted to take it to the second stage. Clearly there's a purpose there, and that's to prevent people from abusing an appeal process just for the sake of it grinding on, which is why I think I suggested that perhaps a portion of the order to pay might in certain circumstances be appropriate, or perhaps there might be a maximum which is required to be posted, as is contemplated under the maximum provisions now for an order.

Mr Christopherson: Under Bill 49, if the government introduced a minimum dollar threshold of \$200 that you had to cross before you were eligible to have the ministry investigate a claim, and if an individual were working for a bad boss and they were ripped off for overtime pay in the amount of \$50 and they couldn't make a claim at the Ministry of Labour because it was under the threshold, and it didn't make any practical sense to hire a lawyer, because saying hello to them would eat up the \$50, and if you weren't comfortable presenting yourself in front of a court and, quite frankly, couldn't afford to take a day off work to do it, would Bill 49 not have had the effect of taking away a right that you currently have under the existing law? Because under the existing law, the ministry would indeed investigate and attempt to retrieve that money for you.

Mr Tremayne: I hesitate to pass judgement on that aspect of it.

Mr Christopherson: I just want to know what you think.

Mr Tremayne: In my opinion, what is being contemplated here is an allocation of scarce resources, and I'm sure the committee has heard that before.

Mr Christopherson: With respect, I appreciate that. I'm only pushing you a little because you are a lawyer

and you perceive yourself as an expert in the field of Employment Standards Act matters. I'm asking you, in your honest opinion here, and it's on the record in Hansard for ever and ever, whether or not in your opinion that employee has lost a right that they currently have. Or are you prepared to go on the record and put your professional reputation on the line and say no, they have not?

Mr Tremayne: No, I would agree with you. I think if someone has a right pursuant to the act, and presumably that is the source of your suggested entitlement to \$50 for overtime pay, and that has been withheld contrary to the act, a person has a right to it pursuant to the act. You're perfectly correct.

Mr Christopherson: Thank you for your honesty.

The Acting Chair: Thank you very much, Mr Tremayne, for coming and presenting to us today. We appreciate your participation.

RENFREW AND DISTRICT LABOUR COUNCIL

The Acting Chair: We now move forward to the Renfrew and District Labour Council, Mr Rick Simmons. Welcome to the standing committee on resources development.

Mr Rick Simmons: I'd like to go at my presentation a little differently, if I may. I will probably give you what my conclusions are and then leave it open for discussion at the end. I do completely agree with the other labour representatives who have been ahead of me. I will make a couple of statements afterwards about minimum excellence and stuff like that.

I would like to start off by saying that in Renfrew county there are numerous employers who have over the years become well known for their numerous breaches of the Employment Standards Act, and we are concerned that this legislation, Bill 49, will cause more hardship for the workers of this county.

I have just recently retired from working for the federal government for the Unemployment Insurance Commission, and over the past 10 years or more there hasn't been one day that has gone by that I haven't referred clients to the Ministry of Labour employment standards officers for assistance.

In one case there were students working for a food chain and there was \$5 being deducted off of their cheques. After a while they asked me what they should do about it and I referred them to an employment standards officer. They found out that the \$5 that was being deducted was being deducted so that the spouse of the employer could buy a Hudson's Bay jacket for her husband for Christmas. The money was returned. This would fall in line with the minimums that you were speaking about earlier.

Wrongful dismissal: People seeking money over \$10,000 is sort of a fallacy. In a lot of cases now — I know of three in particular that have just happened within the last two or three months where the dollar figure has been over \$16,000. None of this money was for wrongful dismissal; this was just through the employment standards officers.

Under the current legislation, a worker may still use the Ministry of Labour to help collect vacation pay,

severance pay, overtime etc. This money would be paid to them from the wage protection fund and then the ministry would collect the amount of money from the employer. At the same time that this was taking place, the same worker could file through his or her lawyer a civil case for wrongful dismissal. Bill 49 is now removing the right for workers to use the ministry while at the same time going to court for a wrongful dismissal case, and they will be forced to decide which route they should go.

The wage protection program was put in place because many workers were being left high and dry by employers who for some reason did not fulfil their obligation to pay their workers. I think one thing this committee should remember is that the Employment Standards Act was put together because of the numerous complaints over the many years from workers because the employers were skipping out on them. The other thing is that it is an employer's responsibility to comply with the Employment Standards Act as is presently written. It is not up to the worker to force the employer to pay moneys owed; it is an employer's responsibility.

It is my understanding that if this change is being implemented to try and remove some of the workload for employment standards officers, then this would then help the Ministry of Labour make its cuts of some 46 employment standards officers over the next two years. This government has an obligation to the workers of this province who for reasons beyond their control are unable to collect moneys owed to them from their employers. The courts will decide on wrongful dismissal and the province should continue to use the wage protection program to the former limit of \$5,000 and not just the \$2,000 they had just recently reduced it to.

Renfrew and District Labour Council would also like to suggest that if this Tory government would provide proper direction to the Ministry of Labour in regard to collecting outstanding debt from employers of this province, the deficit would be reduced and these changes would not be required.

1430

It is our understanding that the Ministry of Labour has directed its employment standards officers to use only fact-finding meetings. This is a drastic change for the worse. If a worker now has a complaint against his employer, he must first try to obtain retribution before the employment standards officer may act on his behalf.

This is somewhat of an ambiguous statement that some ESOs are having letters typed for clients and giving it to them to sign and mail. This letter states that they are requesting any moneys owed to them. If the employer does not comply, the ESO then writes a letter to the employer and the worker and requests a fact-finding meeting, usually at the end of a three-week period.

These fact-finding meetings are somewhat misleading, because if a worker does not receive the proper judgement that he is requesting, they are able to appeal the decision. Some workers are not appealing because they believe that the fact-finding meeting is actually the last step in the process, and some officers are not telling the workers any different.

The other problem with these fact-finding meetings is that employment standards officers are only able to deal

with that one worker from the particular employer, when before they could write an order for all employees to have money paid to them. Now, because ESOs have been told they are not to visit employers' work sites, they are unable to help all the workers at once. Each worker must now file his own complaint.

It has also come to our attention that some of the statistics being kept by the Ministry of Labour are incorrect and are being kept this way to make the organization look like it's doing a tremendous job. It should be stated that the blame for this is not towards ESOs but towards the district managers as well as the minister's office. Some ESOs are having statistics put in for them each month by supervisors which show that they are on the road four days a week and in the office one day. This is not correct, as ESOs have been directed not to make any employer visits and to use the fact-finding meetings.

It is also common knowledge within the Ministry of Labour that up to 30% to 40% of workers with complaints do not use their services, and I wonder why.

Another major concern of ours is that 46 employment standards officers will be released over the next two years when they, the ministry, are considering, with Bill 49, to contract out and collect moneys owed by employers to reimburse moneys already paid out of the wage protection program as well as any balance still owing to the worker.

It is our understanding that the employment standards officers at this time are not collecting moneys owing to the ministry because they are too busy. There are ESOs sending out orders to pay within 15 days, and employers are not appealing the decision and are not sending in the money owed. The ESOs are not following up and collecting the money.

It is estimated that the money owed to the wage protection fund is in the millions of dollars, and if the ministry had collected this money the wage protection program would not have to be changed.

It should be noted that the ministry has been decentralized and that some areas of the province are not doing things on a collective basis. Because of this, workers within the ministry are finding things difficult, as well as the client workers who use their services.

If money is not being collected, then why are monthly statistical sheets showing time spent on this item? For example, in the year 1994-95 some 365 days were spent collecting money. For the fiscal year 1995-96 367.8 days were spent. This represents 1.1% of the total days available for the fiscal year. The total days available for 1995-96 were 34,421.55, which represents 138.39 ESOs, and all that was used to collect moneys owed was 1.1% of this budget, or 367.8 days. I find that rather amazing.

Workers have to wait for moneys owing to them above what has been paid out of the wage protection program and the ministry is not trying to collect any moneys owed. It is our opinion that ESOs should be directed to actively collect this money and that the government should not contract out their jobs.

Many employers are repeat employers and have been directed to make restitution when they have not even paid for a previous order. These employers should be given a priority status not only for collection but also for a complete audit.

Many workers are being threatened that if they complain again to the Ministry of Labour that their employer has not made direct restitution to them, they shall be fired. Audits in the past have substantiated this concern.

The Renfrew and District Labour Council would also like to recommend to this committee on resources development the following:

That "flexible standards," section 3 of Bill 49, subsection 4(2) of the act, be removed from this piece of legislation. It is my understanding that it has been for now.

If employers were forced to pay all moneys owed to workers that are still outstanding and federal-provincial taxes were deducted, the province would have more money to pay the workers of the Ministry of Labour and no layoffs would have to take place.

Employers have an imbalance of power at this present time, and with all of the inquiries and requests for assistance that have been directed to the Ministry of Labour, it should be easy for them to get their priorities straight.

Go after employers and help maintain workers' rights to the employment standards that are presently found within the act.

Mr Hoy: Thank you very much for your presentation. You spoke of the 46 officers who will be terminated in the future, and I believe you were in the room when we heard the discussion from the gentleman from the private collections.

Mr Simmons: Yes.

Mr Hoy: I expect that the government is going to tender out these opportunities for private collectors. I can't see any other way that they would do it. Coupling the fact that these enforcement officers are going to be gone and that there's going to be tendering for private collectors, and we heard that those who tender in a rather low fee scale may not do a very good job, what kind of confidence does it give you that all this is going to work out for the employee?

Mr Simmons: I have a major concern about contracting out any collecting. One of the first jobs I had with the federal government was working as a collection officer and collecting money that was owed to UI. In order to do that I had to fulfil certain obligations, and those obligations were found within the Unemployment Insurance Act. I also had to make sure I signed some documentation that ensured that I would adhere to privacy legislation.

One problem that employment standards officers have had in the past is that they haven't been given the proper tools to do the job. I have spoken to quite a few ESOs in the last two weeks in trying to get some research and statistics for this meeting. I think if they were given the proper direction they could do the job. If they got away from trying to keep false statistics they would do a better job.

I can understand to some extent why the government of today would try to make things look a little rosier than they actually are, but collection is a serious business. People get hurt by it, and it doesn't matter if it's an employer or if it's a client; somebody can get hurt. When you have orders to pay and writs being issued by some

ESOs to the same employers on a daily basis, then the system isn't working, and you can't fault the ESOs; you have to fault somebody who is above them giving them direction, whether it's the minister, the deputy minister or somebody of that ilk.

Mr Christopherson: Thank you very much for your presentation. It's obvious and growing more so with almost every presentation, certainly with every day, that things like imposing a minimum amount that you have to have before you can file a claim, shortening the time frame that you can claim for wages and other money owed from two years down to six months, start to move the floor of employment standards lower and lower till they're almost non-existent. I think that is readily obvious to anyone who wants to be honest and objective about this bill.

I'm interested where you say on page 8, and I certainly agree with you and I'd like you to expand on it, "Further, if significant erosion in minimum entitlements becomes widespread in the many bargaining units where employees do not have sufficient bargaining strength to resist employer demands, it will indirectly impact on the standard of living and working conditions of all Ontarians." I agree with you wholeheartedly. Could you just expand a little bit on why you see that as a slippery slope?

Mr Simmons: If a group of employees working for the same organization negotiates different parts of the contract with the employer so that they're all working separately — they might have a basic contract to work from but they have additional things to that — it creates terrible chaos within the workplace, which in turn creates problems of people either using the grievance procedure or going through some kind of court process. It means that people are going to be further out of money and out of pocket. We don't have any money. People don't have any money today.

One thing that really surprised me about sitting here today, and I came in at 9 o'clock this morning, was that there was nobody here representing himself or herself. I didn't see one non-unionized worker and that's a fear, because maybe you people intimidate them. The second thing is that maybe they don't have the knowledge of what's going on.

In Renfrew county we suffer somewhere around a 35% to 45% illiteracy rate. These people can't read or write. How are they going to be expected to negotiate a contract with their employer when the employer has been lying to them all along? One gentleman just retired after working 42 years for one employer. He's got a pension of \$129 a month. How, in God's name, can he live on that when the federal government is talking about maybe doing away with Canada pension? It's ludicrous.

1440

Mr Baird: Thank you very much for your presentation. I appreciate the time you took to travel down from the valley to be with us today. I just want to respond to some concerns you have, and I'll certainly take your paper back to our discussions.

On page 2 you note as one of the sources for your presentation, "Notes on Ministry of Labour expenditure reduction strategy dated Friday 18 August 1995." That

was a paper that had not become the policy of the Ministry of Labour. For example, on page 4 you listed workplace health and safety inspectors being cut by 20%. That was a recommendation the Minister of Labour rejected. We felt that the cut of 21 health and safety inspectors by the previous government was enough and that no more should be cut, so this government didn't cut health and safety inspectors. That's just something I know the minister feels particularly strongly on.

On page 16 with respect to private collections, I was interested to note that you worked as a collections officer in the federal government. We found that we lacked the expertise within the Ministry of Labour. We used to have a collections branch with 10 collections officers that was disbanded by the previous government in 1993, 10 employees were discharged, and three years later we're still collecting the same 25 cents on the dollar. It was less a question of resources and more a question of experience in terms of the processes.

To be fair to our employment standards officers, though, there was never any significant amount of training of any kind provided to them to undertake that task, so that's not something I blame on them whatsoever. Our idea is, while we're still responsible for collections, to retain the services of collection agencies and require deadbeat employers to pay for the recovery of those funds.

I say this very earnestly: If you have any specific solutions to how we can get the money out of employers, we'd welcome them. Obviously this has been a problem of all three parties, not a partisan issue. If there were easy solutions the Liberals, the NDP or we already would have adopted them, but if you've got any specific solutions we'd more than welcome them, because there's a growing frustration among all members of this committee that we've got to do a better job. It's ludicrous, 25 cents on the dollar. We've got to do a better job for workers.

Mr Simmons: If I could suggest maybe one thing: A lot of ESOs I've spoken to in the last two weeks have told me they are extremely overburdened with paper, and that is a shame in this modern age that we're in now. They can use computers and all kinds of stuff to help them out, e-mail and whatever to keep records, but they don't need all that paper.

The Acting Chair: Thank you very much, Mr Simmons. Again, our appreciation for your attendance here today.

McGRATH CANADA LTD

The Acting Chair: That brings us to McGrath Canada Ltd, Janice Smith. Welcome to the standard committee on resources development. We have 15 minutes together, if you would like to make a presentation, and we can use up the remaining time with questions.

Ms Janice Smith: Very good. Welcome, gentlemen. My name is Janice Smith. I'm the director of personnel and training for McGrath Canada Ltd. This is a collection agency in Ottawa, privately owned, non-unionized, and we've been in business for over 40 years.

I've been with the company for a period of 34 years. When I first started with the collection agency, I didn't have a clue what a collection agency was, but obviously

today I know something about a collection agency. It's my responsibility at the present time to select, to hire and to administer the training for all the staff, and this includes the collectors, the sales representatives and the support staff. Collectors are very, very different from either representatives in sales or the support staff. Therefore you look for different talents commencing with the initial interview.

It's a pleasure for me as a taxpayer and a professional businessperson to learn that the Minister of Labour introduced Bill 49, which is an act which hopefully will improve employment standards. One of the several excellent proposals is the contracting out of collections. I believe this step will save considerable money and also increase productivity. Now the employment standards officers can focus their attention on investigation and employment, and the collections can be done by the specialists who have been trained to do the same.

Should anyone be unfamiliar with the difference that will make in terms of results and savings, let me share my knowledge between the trained professional collector and the inexperienced.

A collector must start with a very keen mind and imagination. They've got to be very inquisitive, friendly and courteous to obtain the information that will enable them to reach their objective of payment in full — not so much today, so much next week and so much the week after, but payment in full.

Now, our collectors get more information with honey than they do with the vinegar approach. The ability to listen to someone and to record important information accurately is a prerequisite. The information that is obtained must be analysed quickly and accurately, identifying true facts from fiction. While still carrying on their conversation, they must be able to reaffirm without repeating their question and to obtain the correct information when they had been intentionally misled earlier. Everyone does not possess this talent and few positions require it. In most circumstances a person has the time to leave, review and supply and look at information before returning with additional questions.

The training is now begun. It will cover debtor motivation, psychology. What is the debtor's hierarchy of needs? Is it prestige, possession, reputation, fairness, honour in the community, fear of losing what he has, or is it simply survival? What keys do you use to unlock these needs that result in payment in full?

The collector must be trained as to the rules and the regulations of the various acts that govern the court proceedings. Self-motivation and discipline are important ingredients when you are involved in all-day situations that are stressful to the other person and sometimes contentious. Other trade associations envy our education department with their hundreds of seminars on 28 subjects and our professional degree programs. This is why professional collectors are a major component in the economy.

Collection work requires considerable expertise and is very time-consuming. The government recognizes that workers will benefit greatly with a professional collector pursuing the money owed to them. The default employer will be responsible for the costs. That is a motivation to

do what is right and to pay any orders immediately. This is a significant benefit to the worker who finds employment and then discovers the employer is unethical, unscrupulous and sometimes able to get away without penalty.

1450

Fortunately, there's only a small minority of employers who ravage and abuse their employees in this manner. Unfortunately, it is done to the most desperate who are newly employed and most likely were without employment immediately preceding the current problem. Turn-over is high in such a place and therefore the occurrences are numerous.

To prevent such problems, public awareness programs should stress the need to file the claims promptly. In this way, investigation would be easier. The practice would not be profitable to the few disreputable employers who would deliberately do such a thing. I feel it is a wise decision to limit the orders to a maximum of \$10,000. Anyone with a claim of that magnitude would have had opportunities to make their claim earlier. Public funding must have a maximum. In matters of this nature, a claim in excess of \$10,000 should be tried before the courts.

Pre-authorization of settlement, 75% with the written permission of the employee: This is what we call a compromise offer. This will save time and costs for the joint clients, the employee and the government. For years, all major clients pre-authorized the collection agency to make settlements within limits without a referral to them. In other words, they give us the authorization to make a settlement with their debtor at our own discretion. Usually it's a set amount, but we don't just do this off the top of our heads. We obviously have to obtain facts before we obtain a compromise offer. We must obtain all the facts about the people we're dealing with to realize the reason why a compromise offer is the best way to solve the problem.

Some authorize 80%, some 50%, but the most common compromise offer amount is 75%. You can see that the government is right on target by adopting this rule. Clients have confidence in the people chosen to collect the maximum amount of money. Our objective is payment in full. The more we collect, the more we are paid. Before accepting an offer to settle for anything less than the full amount, we examine the debtor's ability to pay. If we can collect the full amount, we don't accept a lesser amount. We also have a reputation to maintain with our clients, and if we accept a large proportion of 75% settlements, the client will soon identify the pattern and change to someone who collects all of their money for them. It would not take long for the debtor public to learn we will always accept less, and we would never collect any more than the 75% without a struggle and argument.

Sometimes it may be prudent to settle for less rather than to get nothing. We do not know which one in a hundred may justify the settlement. When we settle, it's the best that can be done. Our clients have never turned down an offer when we recommend it beyond the pre-authorized guideline. Their investigations are satisfied that the recommended offer was in their best interests. Referral back is not cost-justified.

I think that's all I have to say on this subject, gentlemen. I hope I've answered some of the questions with regard to a collection agency. Also, as you understand, being in the personnel field as I am, it's a matter of sitting on a fence. I've got to be able to deal with staff, I have to be able to deal with my employer and I have to be able to deal with the government in many situations.

It's been a pleasure speaking with you and an opportunity to discuss a bill that hopefully is going to be something that will improve situations on both sides. I hope it will. That's the end of the presentation. Thank you very much indeed.

The Acting Chair: Thank you very much, Ms Smith. We move to about a minute and a half of questions each.

Mr Christopherson: Thank you very much for your presentation. You say that you are responsible for the overall training of the employees who do the collecting?

Ms Smith: That's correct.

Mr Christopherson: And they're in the private sector and non-union, in your case.

Ms Smith: That's correct.

Mr Christopherson: Does that mean you couldn't train anybody who was in the public sector and belonged to a union?

Ms Smith: No, that's not correct.

Mr Christopherson: So you could train someone who was in the public sector and unionized?

Ms Smith: Certainly, yes. No problem.

Mr Christopherson: And they would be just as good as your employees.

Ms Smith: No reason why not. I wouldn't just train — they would all get the same attention.

Mr Christopherson: Right. So they'd be at the same level of expertise as the people in your company.

Ms Smith: Exactly.

Mr Christopherson: Thank you. I don't have any problem, and I don't think anybody does, with the fact that a corporation exists to make profit. That's what they do. Having said that, is it not fair to say that more profit is made the more claims that are settled?

Ms Smith: Exactly.

Mr Christopherson: So the collection agency has, as a priority, vested interest in terms of its profit motivation in closing files as quickly as possible, having the parties satisfied and moving on the next one.

Ms Smith: Once the account is paid in full, that's the main responsibility.

Mr Christopherson: Thank you. I would just point out for the record that the problem we have as a party with this approach is not that it is inherently wrong, but that it is more important that the employee's needs and the retrieval of money they're owed be the priority, not necessarily the closing of files to maximize the profit of the collection agency. Thank you.

Mr Bill Grimmert (Muskoka-Georgian Bay): Ms Smith, I wonder if you could perhaps give us a little information on how you compensate your collectors. Are they on salary or are they on commission?

Ms Smith: Part salary and part commission.

Mr Grimmert: What is the reason for that?

Ms Smith: The reason for that is it gives them an incentive.

Mr Grimmett: An incentive to do what?

Ms Smith: They have a base salary and they have an incentive to collect as much money as possible.

Mr Grimmett: Have you found that is an effective means?

Ms Smith: We certainly do.

Mr Grimmett: Could you describe the compensation in more detail?

Ms Smith: It's a percentage on the collections that a collector makes. They're given a certain section to deal with. They're each given a player number that they have, and any collections they make, they make the commission on the amounts of money that are collected.

Mr Grimmett: What is the rate that you charge on a collection?

Ms Smith: It could vary. It can be anywhere from 25% to 50%, depending on the circumstances.

Mr Grimmett: What about the rate of success?

Ms Smith: We have an excellent rate of success. I believe at the present time it's around 47% or 48%.

Mr Grimmett: From the responses we've had, that seems about average in the industry.

Ms Smith: It's average, but I believe if we were to get right down to brass tacks, we are above the average.

Mr Hoy: A very interesting presentation. I would expect that your sales people go out and talk about this success rate that you have, correct?

Ms Smith: Yes, they do.

Mr Hoy: Then they would probably negotiate the fee.

Ms Smith: The actual fee? Oh, yes.

Mr Hoy: Does the collector, the person doing the collecting and the work to get the moneys or whatever you're looking for here — property perhaps; I don't know. But are the collectors and the sales representatives two separate groups?

Ms Smith: Two separate entities, yes. Two separate groups.

Mr Hoy: Interesting. So you have someone who negotiates the fee.

Ms Smith: No, the actual fee usually is set. We can negotiate sometimes, depending on volume. It all depends on circumstances, as I say, so it could be negotiated. It could be a set fee, depending on volume and depending on what has to be done on the accounts. We don't believe in accepting a big volume of accounts and just creaming off the top. If we accept a volume of accounts, we have to work all those accounts to the best of our ability. We don't look at the ones that have the good address. We've got to do our best for our clients. That's the whole idea. 1500

Mr Hoy: I'm trying to work the information that I've gleaned from you and others who are in the collection business. Just for example, 34% of the claims now the employer just refuses to pay. So here we have a situation where 34% of the people just refuse to pay. There is no known reason, and that's what you will try to find out.

Ms Smith: Exactly, yes.

Mr Hoy: If you are a private collector, your fee could be as much as 50% of the moneys in question, and the success rate might only be 50%. So I'm going to have to do a little thinking about that, but I appreciate the information you've been able to provide.

The Chair: Thank you, Ms Smith, for your presentation. We appreciate it very much.

That leads us now to Alfred Friedman. Is Mr Friedman here? Apparently not.

MAJEAN INVESTMENTS CO LTD

The Chair: We'll move to Majeon Investments Co Ltd. Good afternoon and welcome to the committee. Just a reminder, we have 15 minutes for you to divide as you see fit between presentation time or questions and answers.

Mr Matt McGrath: My name is Matt McGrath. My background and expertise are in credit and collections. Communications with commercial enterprises, employers and persons owing money is part of daily business. I know the hardships and the vulnerability of people in need of money owed to them. I also know the games people play when their available credit is used and there is little cash.

I'm not going to repeat or expand on what the previous speaker just said, because I think she explained the matter of settlements very well. There may have been some misunderstanding by the members, and if they want to clarify that later on, I'd be pleased to answer any misunderstandings you might have.

Many people have come to the collection agency in order to get assistance in their attempt to collect money from their employers. In each case it was referred to the Ministry of Labour, and until now their reaction to that suggestion was not complimentary. The common denominator is that the time to effect payment is long and cumbersome.

There is no guarantee that you're going to collect a judgement. Consequently, many people with a legitimate claim, each relative in the overall picture but significant to the individual, were in effect denied the benefit. This is not supposition; this is simply a fact of life.

The unscrupulous employer who shortchanges employees knows the limitations of both the act and the departmental personnel who must work under the act. So the employer gets off with no tangible penalty except a note on his already tarnished file.

Anything that can be done to accelerate the time it takes to resolve the claim and recover the money is a big step in protecting the worker. It will increase confidence in the Ministry of Labour that the laws will protect the worker from the small, insignificant percentage of those exploiting employers. If you're a casual or a part-time employee, it is a major thing to you.

Therefore, with the introduction of Bill 49, which addresses many of these problems, it is worthy of your support.

The prompt enforcement of orders made under the ESA is extremely important as a deterrent to the unscrupulous. It is said that the law is feared only by the law-abiding, not by those who thumb their nose at it. Those who want to evade the payment unless they are forced to do so can delay, evade, elude, dodge, shun, sidestep, baffle, procrastinate and thwart the law until either they die or they move on to greener pastures.

The pursuit of people like this is not rewarding; it is discouraging. It certainly is put to the bottom of the pile.

when more pressing and interesting work is calling for attention. Consequently, recovery of the penalty becomes a low priority and it is reflected in the statistics that we've heard today.

The collection of debts is a highly specialized profession. People owing money recognize the professional debt collectors and pay them first, for they know the consequences if they don't. A debtor company said in a radio interview: "I know it's a thrill to pay a bill. I felt the wrath of McGrath."

They also recognize the non-professional or the amateur and know how easy it is to put the untrained collector on the defensive and how to delay payment. They class debts to the government in the category, "I'll pay them when I win the Lotto."

Debtors are not prejudiced. They will stick anyone they can, whether that is the bank, the supplier or the government. Since the government is the easiest one to evade, because they do not have the expertise on hand, that is the person who gets last paid.

When a debtor company is past due, on an average there are 18 other past due accounts he should be attending to. So it takes the expertise of people who know the companies, who have other knowledge, who have a multiple effect of files on them in order to collect the account.

The staff who administer the Employment Standards Act have many talents cultivated through study and practice, but debt collection is not a subject they are experts in. They have attention-imperative demands and respond to the most immediate, pressing items.

Most people answer to demand. The collection agent makes the demand. Most people respond to the call for help. Debtors don't call for help. They wait until you call, and that is the job of the person who is handling the collections.

It is the professional collector who is an important part of the economy, because everything they recover goes to the bottom line. If you're calculating the cost of collections, just remember that 66% to 75% of the orders not being paid is a mighty big cost. And that's not new. It apparently has been going on for at least 10 years.

So the cost of collecting is much less when you hire independent professional debt collectors. They know the money sources they can recommend to the debtor to get the account paid off. The professional collector is a negotiator. It is imperative that the process of collection is commenced immediately. Delay to allow others to take your money away is not reasonable.

1510

The default employer should be liable for the cost of the collection. This ensures that: (a) the employee receives everything that is owing to him, (b) it is the violator and not the general public that pays for the offence committed by the employer, and (c) the default employer has the motivation to pay promptly.

The proposed Bill 49 appears to be excellent. It takes nothing away from the employee and gives protection and immediate results to the most vulnerable workers. It brings the current act up to date in many respects, encourages negotiation rather than confrontation. It

speeds up the process and gives standards officers more time to do their important job and transfers the collection problem to the professionals who have the expertise.

There are a few suggestions and amendments that I would like to see included. These may have been considered, but they should be looked at again. My suggestions are:

(1) Every employer who does not deal with a bargaining unit must have a copy of the act available for employees within two working days of the request for loan and examination for three days.

An employer should have to have a poster prominently displayed in every workplace stating that these matters should be brought to the attention of the ministry within six months, and such notice should be displayed at least one working day in 10.

(2) Include the poster in media advertising in the department of labour twice yearly.

(3) Shorten the time for filing complaints to create more urgency when there is a violation and to more quickly deal with employers who intend to operate on the short term.

(4) Shorten the time within which orders can be made. There is no reason why this should be hanging over an employer's head for two years. While it is outstanding it stifles positive action and hinders financing. The employee would be better served knowing the end result quickly. If occasionally, for some reason, an extended time is needed, that can be negotiated with the employer.

Dollar amounts should have the suffix phrase of "in 1996 dollars" or "increased at the rate of 3% per year" or "increased at the rate of inflation." This would eliminate the eroding of the levels in current dollar value.

Thank you. Are there any questions?

The Chair: Thank you, Mr McGrath. We have just under one minute each per caucus. This time the questioning will commence with the government.

Mr Grimmer: Mr McGrath, how long have you been in the debt collection business?

Mr McGrath: For 43 years, and I was in — excuse me, 43 years flying our own flag. I was in the debt collection business before that.

Mr Grimmer: Can you give me your opinion on whether or not an employee collecting debts is more likely to have a high percentage recovery if they're on salary or if they're on commission?

Mr McGrath: The motivation to collect and to do a good job has many factors. Number one is the empowering of being able to do it without the hindrance of a great bureaucracy. People think of bureaucracies just in governments, but no, they exist sometimes in firms as well. Incentives to show to the person that if they work hard and do a good job, then they are rewarded, as compared to the person sitting beside them who is lollygagging all the day long. So if they work hard and do a good job, they get more rewards than the person sitting beside them. Yes, a very important part is incentives.

Mr Grandmaitre: Believe me, gentlemen, when you see the name McGrath in the Ottawa-Carleton area, it's synonymous with collection agency. He's been around.

He's very modest when he says 43 years. I think it's been 83 years.

Anyway, Matt, you —

Mr McGrath: I started at a young age.

Interjection.

Mr Grandmaitre: That's right. Once in a while.

Did you say that the recovery or the cost of the fees should be the responsibility of the default employer? Did you say "should be" the responsibility?

Mr McGrath: That is correct. I said it should be.

Mr Grandmaitre: Can you qualify this?

Mr McGrath: In what way do you want it qualified? What do you mean?

Mr Grandmaitre: You say it should be. In some cases it's not? It's not the employer's responsibility?

Mr McGrath: At the present time, it is the creditor that has to pay our fees. I'm suggesting that the employer who has violated the law should have to pay our fees.

Mr Grandmaitre: I agree with you.

Mr McGrath: Except in cases if he pays it right away, of course, we give him benefit —

Mr Grandmaitre: What does that mean?

The Chair: Thank you, Mr Grandmaitre. Mr Christopherson.

Mr Christopherson: Thank you very much for your presentation. I'm just curious. Of the last six presenters, three of them happen to be McGraths or have an involvement with McGrath. I just wondered if there's any relation between you and M. McGrath, where Ms Smith was from, and Mr Kevin McGrath, who presented just a little while ago. Any relationship?

Mr McGrath: Mr Kevin McGrath is a well-trained expert in the field. He has been trained by myself.

Mr Christopherson: No relation?

Mr McGrath: Oh, yes, sure he is. I thought you could recognize that there is —

Mr Christopherson: I just didn't want to assume.

Mr McGrath: He is my son, or I am his father, whichever way you want to say it.

Mr Lalonde: Different companies.

Mr Baird: Just like the 42 CUPE locals that were here.

Mr Christopherson: I'm not making any accusation. I'm just curious. M. McGrath would be you, M. McGrath Canada?

Mr McGrath: M. McGrath is a company held by shareholders, yes.

Mr Christopherson: Right. Where Ms Smith was from. I was just curious.

I wanted to ask you —

Mr McGrath: Did you want to know the other companies that I happen to have some relationship to in Canada and the United States after my time?

Mr Christopherson: Sure, go ahead.

The Chair: Very briefly, Mr Christopherson.

Mr Christopherson: What I would like to ask, though, in a serious vein, is the ministry is suggesting that the law would say that anything under 75% would require ministry approval.

Mr McGrath: That is correct.

Mr Christopherson: I wondered if you would object to having that raised to 100% to encourage the collection of all the money that's owed.

Mr McGrath: That wouldn't encourage the collection one iota. All it would do is tie up the thing for a longer time at a great cost. Clients have confidence that we collect the maximum amount of money we can, and I can tell you from our point of view, if anybody can collect more money on a settlement that we recommend, I'll pay the commission on the difference.

Mr Christopherson: I don't know if that's a yes or a no.

The Chair: Thank you, Mr McGrath, for appearing before us and making a presentation today. We appreciate it.

CREDIT MANAGEMENT SERVICE OF CANADA LTD

The Chair: That leads us now to Credit Management Service of Canada Ltd. Good afternoon and welcome to the committee.

Mr Kalifa Goita: My name is Kalifa Goita, and I can tell you before I commence this speech that I am of African origin and I worked with the public service of my country before coming to Canada. When I started in the collection business here back in 1988, culturally I was not prepared to do that, because where I came from you don't ask from someone you had good dealings with before money they owe you. They know they owe you. They have to pay it. You just leave them with their conscience. Six months later, when I started, after training, I discovered it's a different picture, because the way people act here in this economy is not the same way maybe I grew up, with the same cultural background.

So I'll present here as Credit Management Service of Canada Ltd, and I'm pleased to point out some suggestions. There are several points proposed in this bill that I will address, the majority in a positive, supportive manner.

The changes appear to continue to protect basic standards for workers. At the same time, it updates the legislation in ways that reduce bureaucratic procedures and make it easier for the worker to understand. That is very important. Workers have to understand the field in which they work. If they don't understand it, no matter how excellent is the law, they can't benefit from it. It ensures that the worker will have better recourse should they find they need the protection of the act against an unprincipled employer.

1520

The act now indicates the serious need to file a claim as soon as the offence has been committed if it cannot be resolved. The six-month limitation is an improvement. Maybe it can be shorter, if possible. Forty-five days is more than adequate for any correction to be made if the employer is sincerely trying to make a correction from the time the employee asked for a correction. I think if you do business and you want to expedite the things, you really want to correct the things, you don't wait one month or more to solve the problem. If not, the complaint should be filed. This is the same amount of time now extended to file an appeal after an order is issued.

It would be more fair to all concerned if the decision on an order had to be determined in a shorter period of

time than two years. For the worker, it is a very long time to wait to have a grievance rectified. For an innocent employer, it should not continue to cause disruption in the workplace for that long. It quickly becomes public knowledge that the employer is under investigation, and until it is finalized, the employer is considered guilty. This leads to labour unrest, loss of financing and loss of client business.

The bill proposes that a standards officer can now, with the consent of the parties, settle a complaint before it is investigated. This is an excellent amendment which will save a great deal of time. Therefore, in the case that needs an order, the time should be shortened so as to encourage settlements. The suggested time would be 90 days after a complaint is filed.

The introduction of an employee having one choice of either the courts or the complaint procedure is excellent. No one should be in the position that if they try one and it doesn't give them satisfaction, they can harass the employer by doing the same thing in another forum. The reason for that is it's not likely that if they fail in one, they will get a different decision in the other. It would be a waste of time and an expense to the employer and public money.

The contracting out of the collection of moneys due is the most beneficial amendment introduced. This will save money and time and will produce better results. Collection work requires considerable expertise. The agent has the specialists to do the job quickly and efficiently using the latest technical advances in industry. If the orders are made as promptly as possible and turned over immediately, the result will be impressive compared to the current state of delinquency reported.

The amendment to clarify pregnancy leave is fair and apparently needed by some people. However, it is hard to understand for me why it was needed. If the person is not terminated, then he must be counted as being employed.

The amendment to use any means of verified delivery is in keeping with modern business and service of legal documents in many cases.

Those are the points I wanted to address. Thank you for the opportunity to have input in this.

The Chair: Thank you very much. You've left us two minutes per caucus for questioning.

Mr Lalonde: Thank you for your presentation. Would you say at the present time that the majority of employers are not fully aware of the Employment Standards Act and this is why very often their employees are not treated properly and they're not paying what is coming back to them?

Mr Goita: I'm talking about the employees. Even the employers, I'm saying that if the law exists, people should be aware of what is in it. The employees should be aware of their rights.

Mr Lalonde: Then probably what the government should look at, when you apply for your GST licence and everything, you have some criteria that you have to meet. Probably it would be part of the requirement that you should attend an ESA seminar or workshop to make them aware of what the Employment Standards Act is all about. Also it should be always posted in the workplace. Employees sometimes wait long — six months, a year or

two — until they find out they were not well treated or never got the overtime when they were supposed to be allowed it. Would you agree with this, that probably the government should look at that side and make sure employees and employers are —

Mr Goita: The information program should be implemented, yes.

Mr Lalonde: Also, do you think it is fair to limit it to six months from the date of complaint that you could go back to claim? Is six months enough to you?

Mr Goita: My point here is that it should be in the interests of the person complaining and in the interests of the person who is accused. The matter has to be resolved the fastest way possible.

Mr Lalonde: I fully agree. Probably it's the best thing to go to the private sector collection agencies, but as long as the employee is not the loser at the end.

Mr Christopherson: Thank you for your presentation. You've stated that you agree with the change from two years to six months because, and I think probably from your point of view, the professional business of what you do, it makes sense to get the claim in as early as possible and therefore the trail is hot and all the other arguments that we've heard for that. That seems to make a great deal of sense to me.

But I want to suggest something to you and ask you if that causes you to at least think about what you're suggesting and its impact on people. By shortening the time, this is also having a major effect on the most vulnerable employees working for the worst bad bosses that we have. We know that 90% of all the claims made against employers are done after an employee leaves that place of employment. The main reason, we've heard from every community across the province, is because people are afraid to make a claim while they're still there because they fear they'll be fired, because they have no protection. So the vast majority of these people wait until they have secured another job and they no longer have any ties to that employer and then they make the complaint. The two years gives them enough time to find a new job and go back at least a reasonable length of time to make a claim for money that's been ripped off from them.

Earlier, Mr Kevin McGrath agreed with that and suggested he would support going back as far as possible to collect the money that's due. Does that scenario of that particular worker and their fear and their needs and what happens in you supporting that six-month change —

Mr Goita: My response to that would be to educate the employees or the person suffering that not to wait, to encourage them to point out the problem immediately to the employer, because —

Mr Christopherson: But they're worried about getting fired, sir. They're worried that if they do that, they'll be fired.

Mr Goita: The law has to forbid an employer from firing anybody making a legitimate request.

Mr Christopherson: But the law is already there and it doesn't work. That's not stopping bad bosses, and that's why people wait.

Mr Goita: So the law has to be changed so that you protect the employee from being fired because they ask for their legitimate right sooner.

Mr Christopherson: Would you agree, then, that you wouldn't want to make this change until you've secured that kind of security for those employees? Does that not make sense, that you would be sure to have that protection before you pulled the rug out from under them? Is that not fair?

Mr Goita: If the changes to the law are just a project, it is coming on —

Mr Christopherson: There are no changes in here about that.

Mr Goita: Okay. If the law is changed, one side is, if I have a problem at my workplace today, why should I wait long? I cannot project that my employer is bad —

Mr Christopherson: But people are, sir.
1530

Mr Goita: Immediately I have to tell my employer, "This is what I want," and I will get an answer in the 45 days. If I don't have the answer in the 45 days, he is not answering my question. He doesn't want to solve it, so I can file a complaint immediately.

Mr Christopherson: The reality is they're getting fired. That's why the two years are needed.

Mr Baird: Thank you very much for your presentation. We appreciate it. I guess one of the reasons there was even a two-year period established and the fact that it's never been unlimited is that most of these folks, if you've got an employer who's paying \$3 or \$4 an hour to his employees — he or she is obviously an extremely bad businessperson and is likely to be headed down in flames economically anyway. That's why most provinces have for the most part six months, with a few exceptions here and there, to make the claim.

"Justice delayed is justice denied," one worker said. One previous presenter said that every day that goes by it's harder and harder to collect. What sort of ratio could you give us from your professional experience to settle accounts that are maybe within six months overdue or accounts that are around two years overdue? Those rights are meaningless unless we can enforce them.

Mr Goita: It depends if the person is still there, because you cannot guarantee — the collection of an account is dependent on many factors: the person does exist, is still there and has something to pay. If not, well, it is uncollectible, simply like that. If you send me accounts — maybe the business is big, \$1 million, but if those people disappeared, they are not in business, because we are talking about employer, I won't find them. I may find the owner, but the business is dead or bankrupt. That's uncollectible at the first place.

Mr Baird: So workers are more likely to get money in their pockets that they're owed, that they worked for, if they file earlier.

Mr Goita: Yes. That's why we have to act faster, while these people are earning money and they have assets to seize.

The Chair: Thank you, Mr Goita, for appearing before us and making a presentation today. We appreciate it.

Mr Goita: My pleasure.

The Chair: That leads us now to the Amalgamated Transit Union, Local 279. Is there a representative from the Amalgamated Transit Union? That is most regrettable, another no-show.

CANADIAN UNION OF POSTAL WORKERS

The Chair: That leads us now to the Canadian Union of Postal Workers. Good afternoon. Welcome to the committee.

Mr Jeff Bennie: Good afternoon.

The Chair: Just a reminder that we have 15 minutes and you can divide that as you see fit between either presentation time or questions-and-answer period.

Mr Bennie: I don't think I'll take that long. As I've indicated on my brief, which should have been passed out, my name is Jeff Bennie. I'm one of the national representatives from the Canadian Union of Postal Workers and the areas I work in for the union are health and safety, workers' compensation, pensions and benefits.

As I indicated in our brief, we're a national union and for the most part we represent postal workers involved in the processing and delivery of mail. These workers fall under federal jurisdiction, but we also represent some cleaners in post offices around the province of Ontario, so they are covered by provincial legislation.

As you're aware, last May the Honourable Elizabeth Witmer introduced changes to the Employment Standards Act that were described by the government as minor housekeeping amendments. Of course, nothing could have been further from the truth as the proposed amendments would negatively affect the basic working conditions of most Ontario workers and make it more difficult for workers to get basic justice when employers violate standards.

However, since that time of course we've seen the withdrawal by the labour minister of the section dealing with the flexible standards, which would have allowed workplace parties to negotiate under the basic standards, but the government is saying it's going to reintroduce this concept when it launches a more comprehensive review of the act.

It would be our position that we would recommend that all aspects of this bill be scrapped, considering the government is proposing a more comprehensive review of the act. But we don't think that's likely to happen, so we're going to address some of our concerns today that we have with Bill 49.

First of all, in regard to the enforcement provisions for organized workers, under the existing language of the present act, unionized workers have access to an efficient and relatively expeditious method of investigative procedures for violations of the act. Bill 49 would effectively deny unionized workplaces and unionized workers access to this process and transfer the costs of enforcement to the workplace parties through the grievance arbitration process. We believe this is nothing more than a case of the government abrogating their responsibility to enforce the legislation and pass the costs on to the workplace parties, both unions and employers. It's also going to lead to an increase in the backlog of arbitration cases which any trade union representative can tell you in most cases is already severe.

In regard to enforcement provisions for unorganized workers, these proposed changes shift the responsibility for enforcement of the standards away from the Ministry of Labour and its inspectors to the judicial system by way

of the application of the other-means provisions. We would suggest, considering the state presently of the judicial system in Ontario where we constantly are bombarded with horror stories of backlogs in that system, to add to that burden doesn't make a lot of sense. What we need to be looking at is better methods of enforcement of the provisions. Justice delayed is justice denied.

With regard to the amount recoverable by a worker when owed back wages, there is now a proposed cap of \$10,000 where presently there is no arbitrary limit set. Also, now the bill would say that if a worker decides to pursue a claim through the Ministry of Labour provisions, then the worker would be denied access to courts if they decided to launch a civil action for additional compensation. It is our position that these changes all amount to a denial of basic rights for workers with no accountability for employers who violate legislation.

The ceiling on claims: It seems that this maximum cap is going to apply to amounts owing in regard to back wages as well as other compensation such as vacation pay, severance pay and termination pay. In many cases, severance pay for long-term workers can add up to much more than the proposed cap. Arbitrary maximum and minimum caps will only result in employers attempting to try to avoid many of the payments due to workers.

Then we get into the area of private collectors. This bill recommends that the private sector be used to collect excessive amounts owed and enforce standards, rather than having the labour employment practices branch perform this function. This appears to be the thin edge of privatization of the regulatory process in Ontario and I would again say an abrogation of the government's role to legislate and enforce minimum workplace standards. As opposed to this approach, the Ontario government should be establishing penalties that would be levied against delinquent employers as a deterrent and enforcing those penalties.

In conclusion, CUPW says that taken together the proposed amendments will result in poorer working conditions and more injustice for both organized and unorganized workers in the province of Ontario. Therefore, we are opposed to those proposed changes and would ask the Ontario government to seriously consider these proposals. In our opinion, it is the role of government in our society to protect the most vulnerable members of our society, not to attack them.

Before I conclude, I just want to say that as a representative of a national union that mostly deals with the federal sector, I have gone through similar processes for federal legislation, most recently part III and part II of the Canada Labour Code, and I would like to suggest to the government representatives here that if they truly want to sit down with the workplace parties when they are dealing with their more comprehensive review of the act which they're talking about down the road, they hold true consultations. That is how we have done it in the federal sector, with both part II, which dealt with the health and safety legislation — and we're now doing with part III, which deals with employment standards. We are having consultations between government and employers and the Canadian Labour Congress representatives where we come to consensus agreements. We don't get every-

thing we want, employers don't get everything they want, but we all get something we can live with. After all, we don't have to like each other, but we have to live with each other.

The Chair: Thank you, and you've allowed us just over two minutes per caucus for questioning and this time it will commence with the third party, Mr Christopherson.

Mr Christopherson: Thank you for your presentation. You mentioned in your opening remarks that you would prefer that the government pull back this entire bill and refer it to a larger review. I would just underscore the point and remind everyone that the whole purpose of trying to ram this through as quickly as possible — and you're right, they tried to ram it through by the end of June, without public hearings. The reason they want to do that, of course, is this bill allows them to offload a lot of responsibilities, as you've pointed out, to individuals, puts it in the court case, throws it back to unions and employers to take care of, in some cases just denies or narrows rights that workers have and therefore they can lay off 45 employment standards officers to save bucks. That's why they're rushing this through and why they're refusing to fold it into the broader review.

1540

I want to ask you to comment on something. You make the statement in your conclusion, "Taken together, these proposed amendments will result in poorer working conditions and more injustice for both organized and unorganized workers in the province of Ontario." The Nepean Chamber of Commerce earlier today said that this law and others will, "ensure that the province of Ontario becomes the most attractive place in North America for business to invest and create wealth and employment." Why do you think there's such a divergence in opinion between business and labour about Bill 49?

Mr Bennie: I think both comments say the same thing, actually. I think with this legislation going through and with the proposed changes that will probably be coming down the road on this government's timetable and other legislation, of course this province will become an attractive place for investment. As the minimum standards are eroded for non-organized workers, the pressure will build in respect to organized workplaces to follow the trend and to negotiate consent contracts where we cut back on what we consider right now basic provisions and basic rights. So I don't think what the Nepean Chamber of Commerce said and what I said are diametrically opposed at all; I think we're saying the same thing, just from a different viewpoint.

Mr Christopherson: I agree with you entirely.

Mr Baird: Hoping this doesn't become a love-in, to add my comments to the love-in, your suggestion of consultation and the comprehensive review of the act going to be undertaken over the next four or eight months is a very valid one to work together with organized labour and management in the business community. I can indicate to you already there have been a good number of meetings with both groups, with the Ontario Federation of Labour, Sid Ryan, the president of CUPE, and the Ontario Chamber of Commerce. At the risk of trying to jump into this love-in, I'll certainly agree with your comments the comprehensive view is very valid.

The Chair: Any comments or questions from the official opposition?

Mr Hoy: Yes. I've got to find my page here. "This appears to be just the start of the privatization of the regulatory process." Of course, you'd know that the government has just named a minister of privatization, so you're quite right, there are things going to happen in the future as far as privatizing the role of government, which has traditionally been not private.

You're speaking on behalf of the postal cleaners, in the main here, at this particular time, and I appreciate that, plus you're concerned about issues that would pertain to the whole organized workforce, and I appreciate your comments in the presentation. I agree with you that this government up until now has not — consultation has not been their hallmark, so they have been requested to meet with people more often and I hope that in the second phase they will.

Currently, we're seeing some change of heart. After all, we are here this afternoon talking about Bill 49, but in the past you would probably be aware that the government's record has not been one of great consultation. As a matter of fact, they made many changes between June and September when the House was called back for its first official opening. They have and had a very ambitious agenda, which doesn't always include discussion.

The Chair: Thank you very much, Mr Bennie, for taking the time to appear before us here today.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

The Chair: That leads us to the International Association of Machinists and Aerospace Workers. Good afternoon. Welcome to the committee. Just as a reminder, we have 15 minutes, but it's up to you to divide that as you see fit between presentation and questions and answers.

Mr Sam Connor: My name is Sam Connor, a staff rep with the international association of machinists. On behalf of our union, we would like to thank the committee for the opportunity to put forward our views on Bill 49 on behalf of 20,000 members of the International Association of Machinists and Aerospace Workers in Ontario.

While we are pleased to appear before you, we are disturbed that the government has introduced this legislation without prior consultation with all workplace stakeholders. Bill 49 is not a minor piece of housekeeping legislation. It significantly shifts the balance of power in the workplace of this province — already against the workers — further in favour of employers. Even more important, it would radically change the nature and operation of employment standards legislation.

Employment standards legislation sets a basic minimum floor of fair treatment for all workers. It is particularly crucial for the most vulnerable workers — low-paid, non-union — for whom the employer-employee relationship is most unequal and for whom limited resources make alternative sources of redress virtually impossible.

Obviously, the value of employment standards is closely tied to the level of enforcement. Standards which are not enforced are meaningless, and enforcement in our

current system leaves much to be desired. The ministry has insufficient resources; there are long delays; there are too many risks for the most vulnerable workers to safely claim their rights. We will discuss later some of the positive improvements that should be made to make our employment standards more effective. Unfortunately rather than offering improvements to the system, Bill 49 would seriously weaken current standards and particularly enforcement of those standards.

Section 3 of Bill 49 allows a collective agreement to provide for subminimum standards as long as the sum of hours of work, overtime pay, public holidays, vacation pay and severance pay confers greater rights than the minimum standards for these items taken separately.

The Minister of Labour has apparently promised to withdraw this section of the bill, leaving the issue of flexible minimum standards to further review. While we welcome this modest display of good sense, we can only ask why the government concocted this scheme in the first place without public input.

While we hope that the oxymoronic concept of flexible minimum standards is dead, we want to make very clear the problems which will arise if this idea is resurrected.

First, it is practically impossible to assess together the disparate elements of the minimum standards. How do you value relatively, for example, hours of work versus severance pay? Do the summed standards have to be met for each individual or can some workers receive below the minimum on everything as long as a group of employees seem to exceed the minimum standards when assessed together?

If you exempt workers covered by collective agreements from the clear standards of the Employment Standards Act, you add another layer of complexity to collective bargaining. Issues which should or could previously be left out of the bargaining process because they are covered by the act will now have to be explicitly dealt with. This will be disruptive, costly, and will ultimately make Ontario a less competitive place to do business, which is presumably contrary to the aims of the current Ontario government.

1550

While we feel that having to bargain minimum standards will be an inconvenience for legitimate, established unions, we are particularly concerned that flexible minimum standards would open the door to phoney unions — employer-dominated employee associations — to make deals that strip workers of their minimum rights in the workplace, with no effective recourse for the workers affected.

While flexible minimum standards were a particularly egregious attack on workers, the rest of Bill 49 is little better.

Bill 49 takes away the option of a worker covered by a collective agreement, including those covered by a Rand formula, to make a claim under the act. A worker who believes he has been denied his legal rights is forced to proceed under the grievance procedure. If a settlement cannot be reached and the union involved decides not to proceed to arbitration, the worker's only recourse is an unfair representation claim to the Ontario Labour Relations Board.

This makes what is a relatively cheap and simple, if still too slow, process into a much more lengthy and expensive one. It is hard to see how anyone gains from these changes except employers intent on breaking the law.

Bill 49 offers unscrupulous employers the means to undermine the rights of workers and their unions by consistently refusing to meet minimum standards. The need to continually resort to costly arbitration simply to enforce legislated minimums may place a union, particularly a small and poorly financed union, in an untenable position, having to choose between being bankrupted by continual arbitrations or facing unfair labour practice charges before the OLRB.

The situation is no better under Bill 49 for workers not covered by a collective agreement. They will have to make an almost immediate and irrevocable choice, usually without reliable independent advice, about whether to proceed with a complaint under the act — with limits on the size of the claim — or to sue in civil court, which may provide fuller compensation but is usually slow, expensive and an unrealistic option for most workers looking only for the minimum standards provided under the law.

Small Claims Court is sometimes a quick and cheap option, but the amounts covered are limited. Under Bill 49, once a worker opts for one route of redress, the other options are closed.

Bill 49 sets a new \$10,000 limit on the size of an individual claim and the minister may also prescribe a minimum. There is absolutely no justification for such limits, which simply provide further incentives for employers who cheat.

Bill 49 provides for the subcontracting of collections and "compromise" settlements, which will usually be made with a gun to the head of the employee. These two provisions allow the cheated employee not only to be forced to accept less than the statutory minimum, but also to end up being forced to pay for the collection of what he or she is owed under the law.

Bill 49 would deal all the cards to unscrupulous and cheating employers at the expense of the most vulnerable workers.

Bill 49 also reduces filing limits for ESA claims from two years to six months, making it easier for a stalling employer to slip out from under the coverage of the law. On the other hand, the period for an employer to appeal has been extended from 15 to 45 days.

The bill does contain a couple of positive changes: clarification that vacation accrual is based on all service, and the inclusion of periods of pregnancy and parental leave for the calculation of length of service.

Overall, however, Bill 49 would bring about a serious weakening in the enforcement of minimum labour standards in Ontario. We ask this committee to recommend that Bill 49 be withdrawn and a full consultation process be undertaken to bring forward changes that will truly improve the conditions of workers in this province.

We need better education and stronger enforcement, with mandatory posting of the provisions of the act in all workplaces.

To protect the most vulnerable, we need to allow for investigations based on anonymous and third-party complaints and strong penalties for employer reprisals against workers attempting to obtain enforcement of the act.

There must be heavy penalties and active public prosecutions of employers who break the law, particularly repeat offenders and those who refuse to quickly pay out orders.

The ministry must have the mandate and the resources to investigate and resolve complaints quickly and the resources to perform thorough audits at workplaces where individual abuses have been found.

The ministry now has up to two years to investigate a claim and it can take another two years before a delinquent employer can be made to pay. These time limits must be shortened and the ministry provided with the resources to bring about orders and settlements in a timely manner. The current system is far from perfect, but Bill 49 is moving in the wrong direction. We urge this committee to take this message to the government of Ontario.

Respectfully submitted, Sam Connor, on behalf of the IAMAW.

The Chair: Thank you. That leaves us just over one minute per caucus for questioning. This time it will start with the government members.

Mr Barrett: Thank you, Mr Connor, for your brief on behalf of the International Association of Machinists and Aerospace Workers. You've mentioned the issue of enforcement of the Employment Standards Act. Through these hearings, our goal is to design a system that results in not only more effective enforcement but more efficient enforcement, to allow us to be able to allocate scarce resources to those people who are most vulnerable to the abuses in the system.

This present system, and you've indicated some criticisms of the present system, has had critics over the years since the act first became law in 1974. There have been myriad amendments in a patchwork approach and many authors of reforms over the years. Our goal is to try to pull this together into a system that's understandable, more efficient, more effective, and to try to streamline the process and enable both sides to get on with business and job creation and ultimately provide a much better climate for work in this province.

As you mentioned you feel there hasn't been enough consultation, there is a second phase. This committee has been travelling extensively and we certainly welcome further input in phase 2.

Mr Grandmaitre: You must agree with us that it would have been much better if not only the administrative legislation was before us but the enforcement procedures had been included in the present legislation so you'd have a better understanding of what's coming at stage 2.

My question is directed to the parliamentary assistant. This is not the first time that people have addressed their concern about section 3 of this bill, and again we hear that the Minister of Labour has apparently promised to withdraw this section of the bill. How sure are we that the minister will withdraw section 3 of the bill?

Mr Baird: With respect to the section dealing with negotiating a package higher than the average, the minister's comments are quite clear and on the record with respect to her opening statement, the first person this committee heard from. I think her good reputation stands by her remarks as recorded in Hansard, a copy of which I'm happy to give you if you have a concern.

Mr Grandmaitre: But it is guaranteed by the minister?

Mr Baird: The minister was very clear in her statement what her intention was, and certainly she stands by that.

Mr Christopherson: Thank you for the presentation. You've been more specific than many others on the real concern about negotiating standards below and how that might happen in non-union establishments. I've raised this before, but you're the first one to articulate it in this way. I was very impressed when you talked about the fact that "flexible minimum standards would open the door for phoney unions — employer-dominated employee associations — to make deals that strip workers of their minimum rights." Anyone who's had experience in the labour movement understands that many of these phoney unions, the employer-dominated associations, are just another way of corralling the workers into conditions that no proper union would ever accept on behalf of the people they purport to represent.

1600

I want to draw to your attention, so you know you're not just blindly shooting in the dark, that the minister said in a scrum on the day she introduced this bill, in answer to a question from Thomas Walkom of the Toronto Star — this is the reporter asking the minister in a scrum:

"Reporter: Is it possible in a non-union shop to bargain away Christmas or overtime or whatever? Is it possible to change the minimum standards?

"Minister: I guess there would be that opportunity to make those changes.

"Reporter: In a non-union shop? How would you go about doing that?

"Minister: Obviously that's something we would need to...look at. Obviously there is the opportunity to make some changes."

I suggest that you might want to take a moment to expand on your concern, should this government even think about trying to go around certified unions as being the bona fide representatives of working people in this province.

Mr Connor: The only thorough way we could actually do this — it's been mentioned here that a consultation process will be done in the next couple of months or the short duration it may take for these further consultations. I know the IAM, together with the different federations, will be monitoring moves by the province of Ontario to introduce or provide through the media ways of circumventing proper union activities and proper collective agreements and proper negotiations. We'll do our damndest to monitor that.

The Chair: Thank you, gentlemen, for taking the time to appear before us today. We appreciate it very much.

UNITED STEELWORKERS OF AMERICA,
LOCALS 4820, 4632, 6946, 7940,
8327, 8580, 8794, 8952, 9211

The Chair: That leads us now to the United Steelworkers of America. Good afternoon and welcome to the committee. Just as a reminder, the 15 minutes are yours to divide as you see fit between presentation or questions and answers.

Mr Gerard Carthy: Good afternoon. The Steelworkers listed on the previous page are made up of more than 4,000 members in the workplace from Ottawa east to Hawkesbury, and Ottawa west to Deep River. This membership includes people from hospitals, nursing homes, textile, steel mill, manufacturing of plastics, roofing, paper mills, credit unions, explosives manufacturing, laundry, drug trading, warehouse and distribution centres, open-pit mining and refining, nuclear power, atomic energy, technical workers, foundry aerospace industries, as well as car parts for GM, all of which cover approximately 40 different employers.

Creating conflicts between the employer and the employees: Until now, the labour relations system has helped in obtaining settlements between the employer and the labour force. The proposed amendments will put a stop to this. The collective bargaining process will become more difficult, especially in workplaces where unemployment standard minimums are presently in place like with security guards. We will vigorously oppose and fight any attempt by employers to obtain reduction from the present minimum standards.

Measuring rights: The proposed amendments will force the parties involved into an accounting nightmare. For example, an employer might suggest that workers work an extra shift, say, on Saturday or Sunday and get double-time pay in exchange. The employees may not agree that this extra money will make up for a lesser quality of life; therefore, there is no greater overall benefit for them. This would no doubt lead to bitter disputes between the parties. In short, it appears to us that the amendments are being proposed to allow employers to simply waive the minimum standards.

Privatizing enforcement: passing the costs on to unions section 20 of the bill, subsection 64.5 of the act. Bill 49 is forcing the unions to pick and choose what complaint would proceed because of the high cost involved. Tremendous hardships will be put on the unions when forced to use the grievance procedure. Therefore, due to the cost to pick and choose complaints, members would most likely feel they are not being properly represented by their unions.

Bill 49 will require unions to become familiar with the pre-existing complex jurisdiction under the act, because unions, and not individual complaints, will be responsible for determining whether to proceed with a complaint. Therefore, the union's finances would be mainly spent on these complaints, and cutbacks to other important areas being protected by the union would be effected. For example, can any union afford to cut back on enforcing health and safety for their members?

With all the red tape and the investigation involved, the delay in filing the complaint may result in employees

being unable to recover money due to the proposed six-month limitation period for filing complaints and the one-year limitation period for recovering back pay. In short, the litigation will be difficult and expensive and there will be enormous opportunities for employer counsels to obstruct access to information and evidence. This will make it difficult for unions to enforce and prove claims. This Bill 49 is trying to force smaller locals into receivership.

We feel that pre-hearing production is essential. Mostly, the information necessary to succeed on such claims is often solely within the knowledge of the employer. Therefore, unions would be forced to file, to proceed with complaints to an arbitrator in order to compel productions and disclosure. If there had been an investigation by an employment standards officer, some of these complaints could have been resolved before the arbitration stage, thus saving time and funds.

Bill 49 would be forcing employees to decide whether to spend their wages on food for their families or for lawyers to go ahead with the complaint. Why is the law allowing employers who violate Ontario's most basic employment standards to benefit in this unconscionable manner?

Bill 49 limits an employee's options by putting a cap of \$10,000, forcing an employee to decide in two weeks whether to proceed or withdraw their complaint to pursue a civil remedy.

Although employers are prohibited under the act from retaliating against employees who lodge a complaint, most employees would find it hard to proceed, because they do not understand their rights under the act and some fail to complain about the violations within the limit of six months. Therefore, the reduced limitation period will reduce liability for offending employers at the expense of working people, or the employees will simply have to forgo wages owed to them. This will result in legitimate claims being abandoned.

Because private collection agencies are going to assume powers of collection available to the employment standards branch, employees will not receive 100% of what is owed to them; the collector is permitted to take a portion of the minimum wages and benefits owing. Workers are going to be the only people affected by this change, as money will be coming from their pockets.

This new system will encourage employers to negotiate fiercely with collection agencies to reduce their liability under a compromise or settlement. It makes it quite clear that only the workers stand to lose from this amendment.

We feel the changes to Bill 49 would have adverse effects on the workers as it undermines many of the basic principles on which minimum standards legislation has been based. We believe that both organized and unorganized workers will bear the burden and their lifestyles will have to change, as cutbacks will have to be made in other areas. Think of the members of these people's families, who will also be affected. This may not seem like much of a problem to higher-paid executive people, but to the approximately 70% of the lower-paid workers in the province it means a lot. And remember, we all vote come election time. Respectfully submitted.

1610

The Chair: Thank you very much. That affords us just over two minutes per caucus for questioning. This time the questioning will commence with the official opposition.

Mr Hoy: Thank you for your comments on behalf of the nine locals of which you are a representative. The \$10,000 cap is quite bothersome to me, particularly when the government says that only 4% of the people claim over and above \$10,000. It would be very interesting to know how many dollars that 4% represents in comparison to the other 96%. It would be most interesting to find out. They say, "Four per cent is not that much, so let's cap it at 10%," but what percentage of total dollars being claimed does that 4% represent?

You mentioned the "measuring of rights," and the presentation prior mentioned "confers greater rights." If the government pursues section 3 at some later date, it is going to be very, very difficult. The definitions that flow from those words are going to be onerous, I believe. I appreciate all your comments. I didn't have an opportunity to mention this to the people who were up just before you, but they said: "Do the summed standards have to be met for each individual, or can some workers receive below the minimum on everything as long as a group of employees seem to exceed the minimum standards when assessed together?" This is the type of thing the government is going to have a nightmare with, I believe, if they pursue the other part of the act later. But I appreciate your comments, in particular on the \$10,000 limit.

Mr Christopherson: Thank you very much for your presentation on behalf of all the locals. I think it's important for the committee to hear from someone like you. I just counted: The locals you're representing are involved, in one degree or another, in almost 20 different areas of economic activity, different businesses, different parts of our economy. You say, quite to the contrary of many business representatives and government members who say this bill and other things the government's done are going to make for more harmonious relations and things are going to be hearts and flowers and everybody will sit around the table and sing Kumbaya and the world will be wonderful, "The collective bargaining process will become more difficult, especially in workplaces where employment standard minimums are presently in place, like with security guards." You state you will "vigorously oppose and fight any attempt by employers to obtain reductions."

This is consistent with presentations we've had from other unions across Ontario. It suggests to me that the climate this government's going to create is one of a great deal of increased acrimony, more strikes, and with scabs we have the potential for violence. This is the opposite of what the government says they're going to do, just like their bill says it's going to "improve" the employment standards and the opposite's true. In all those businesses you're in, do you see that in the Ottawa area and the people you represent? Do you see this creating more and more trouble in terms of the relationship between employers and employees?

Mr Carthy: Oh, yes, we certainly do. We see that quite a bit in our area throughout the Ottawa Valley.

Especially for the people who are not in any unions, they're paranoid right now, as it is, to make a complaint. The way the cap is right now there would be less of a complaint, and then after you go past the six months or whatever, when the person's back is up against the wall, they're going to retaliate. Once again, the working person is going to get ripped off.

Mr Barrett: We appreciate this presentation from the United Steelworkers, those several locals listed on the brief. You made mention of one example of an employer asking for Saturday or Sunday shiftwork, offering double time, which may or may not be accepted, depending on how people feel it would affect their quality of life. That's a fairly standard deviation in hours of work, but incredible, dramatic changes in our labour market are occurring, and as a government we must be flexible. We have to accommodate these changes.

My riding is home to steel industry and steelworkers; it's a growing industry in my riding, but so much of manufacturing and heavy industry is in decline. We're seeing the rise in the service sector, home workers, part-

time workers. We have to come up with a bill and a rewrite of this that accommodates myriad situations beyond traditional patterns of work. I think our ultimate responsibility is providing the best value for taxpayers. Most taxpayers are workers. By coming up with as streamlined a set of regulations as possible that ensure enforcement — we need to provide the enforcement and protection for workers in as efficient a way as possible. We would appreciate any further input from you now or in the second phase of these hearings.

The Chair: Thank you very much for appearing before us here today and making a presentation.

That concludes our hearings here in Ottawa this afternoon. We'd like to thank everyone who took the time to make a presentation and those who are in the audience who have listened earnestly in a dignified fashion. We appreciate the attention that was paid to this bill, and I thank my colleagues. This committee stands in recess until September 9 in Belleville.

The committee adjourned at 1616.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Vice-Chair / Vice-Président: Mrs Barbara Fisher (Bruce PC)

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Mr Jack Carroll (Chatham-Kent PC)
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*Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L)
Mr Bart Maves (Niagara Falls PC)
Mr Bill Murdoch (Grey-Owen Sound PC)
Mr Jerry J. Ouellette (Oshawa PC)
Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Toby Barrett (Norfolk PC) for Mr Ouellette
Mr Jim Brown (Scarborough West / -Ouest PC) for Mr Carroll
Mr Gary Fox (Prince Edward-Lennox-South Hastings / Prince Edward-Lennox-Hastings-Sud PC) for Mr Maves
Mr Bernard Grandmaître (Ottawa East / -Est L) for Mr Duncan
Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC) for Mr Tascona
Mr Garry Guzzo (Ottawa-Rideau PC) for Mr Murdoch
Mr Bert Johnson (Perth PC) for Mrs Fisher

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Avrum Fenson, research officer, Legislative Research Service

CONTENTS

Thursday 29 August 1996

Employment Standards Improvement Act, 1996, Bill 49, <i>Mrs Witmer</i> / Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, <i>M^{me} Witmer</i>	R-1251
Ottawa-Carleton Board of Trade	R-1251
Mr Willy Bagnell	
United Brotherhood of Carpenters and Joiners of America, Local 93	R-1253
Mr Sean McKenny	
Nepean Chamber of Commerce	R-1254
Mr Robert Wilson	
Mr Buck Arnold	
Renfrew County Legal Clinic	R-1256
Mr Richard Owen	
Public Service Alliance of Canada	R-1258
Mr Peter Cormier	
Gloucester Chamber of Commerce	R-1261
Mr Jim Anderson	
Mr Gerd Rehbein	
Ontario Public Service Employees Union, Local 439	R-1263
Mr Jim Murray	
Transportation-Communications International Union	R-1265
Mr Don Bujold	
Ms Maureen Prebinski	
Hospitality and Service Trades Union, Local 261	R-1268
Mr Jim McDonald	
Ottawa and District Labour Council	R-1270
Ms Naomi Gadbois	
CCS Canada Ltd	R-1272
Mr Kevin McGrath	
Canadian Union of Public Employees, District Council — Ottawa-Carleton	R-1275
Mr Steve Sanderson	
Emond Harnden	R-1277
Mr Andrew Tremayne	
Renfrew and District Labour Council	R-1279
Mr Rick Simmons	
McGrath Canada Ltd	R-1282
Ms Janice Smith	
Majeau Investments Co Ltd	R-1284
Mr Matt McGrath	
Credit Management Service of Canada Ltd	R-1286
Mr Kalifa Goita	
Canadian Union of Postal Workers	R-1288
Mr Jeff Bennie	
International Association of Machinists and Aerospace Workers	R-1290
Mr Sam Connor	
United Steelworkers of America, Locals 4820, 4632, 6946, 7940, 8327, 8580, 8794, 8952, 9211	R-1292
Mr Gerard Carthy	



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Monday 9 September 1996

**Standing committee on
resources development**

**Employment Standards
Improvement Act, 1996**

Assemblée législative de l'Ontario

Première session, 36^e législature

Journal des débats (Hansard)

Lundi 9 septembre 1996

**Comité permanent du
développement des ressources**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



Chair: Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 9 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 9 septembre 1996

The committee met at 1033 in the Greek Community Hall, Belleville.

EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Vice-Chair (Mrs Barbara Fisher): Good morning, everybody, and welcome to our hearings here in Belleville, in the riding of Quinte, where we're hosted this morning. I welcome everybody who has come as participants in delegations to present as well as those who have come to listen to our hearing process.

To outline what will happen here, we will have sessions where those who come forward will have a 15-minute presentation period, which will include questions and answers. The time for questions and answers will be split evenly between the parties after the presentation has been made.

With the concurrence of the members I would also like to offer Doug Rollins a few moments to bring greetings.

Mr E.J. Douglas Rollins (Quinte): On behalf of the Quinte riding I would like to welcome this committee here. I believe it's the first time in the history, to my knowledge, of the Quinte riding that we've ever had a standing committee heard here, in Belleville, and for that I would like to say thanks to the Vice-Chair and the Chairman who arranged to have it here. I would like to think it's one more opportunity, as people who live in eastern Ontario away from the big smoke and the big cities, to be heard locally. I express that and hope that you people find Quinte riding to your liking and that we will see another time come back.

Mr Joseph N. Tascona (Simcoe Centre): On a point of order, Madam Chair: Since there are no representatives of the NDP here today for these hearings, what would be the order of proceedings?

The Vice-Chair: We will split the time evenly until and if somebody shows up from the third party.

BELLEVILLE AND DISTRICT
CHAMBER OF COMMERCE

The Vice-Chair: I invite the representatives from the Belleville and District Chamber of Commerce to come forward, please. Good morning. For the sake of Hansard and those present I ask you to please introduce yourselves.

Mr Greg Chambers: My name is Greg Chambers. I serve as first vice-president of the Belleville and District Chamber of Commerce and as chair of its government affairs committee. With me is Bill King, a member of the government affairs committee and a past president of the chamber of commerce. The Belleville and District Chamber of Commerce has been the representative voice of business in Belleville since 1864. Currently membership numbers over 500 companies in all categories — large and small — including manufacturing, retail, professional, financial and service industries.

It is our understanding that Bill 49 has three goals: (1) to allow the Ministry of Labour to use its resources in a more efficient and effective manner when administering the Employment Standards Act; (2) to simplify and improve some of the language in the act, making it easier to understand and use; and (3) to promote greater self-reliance and flexibility among the workplace parties. Further, we understand that Bill 49 represents the first of two phases intended to modernize the Employment Standards Act. We view the first phase as process-oriented and assume that the next phase will address the standards themselves. In our opinion, Bill 49 will deliver a solid first step in the intended direction.

There can be no doubt that the act is in need of reform. Since originally enacted, the workplace and its surrounding economic climate have changed dramatically. Over the years numerous piecemeal exemptions and modifications have been made, such that the totality of the act has become extremely difficult for legal minds to comprehend, let alone workers and employers. This situation was highlighted in the 1987 report of the Ontario Task Force on Hours of Work and Overtime. In the years following that report we have witnessed dramatic new trends in information technology and global competition which have significantly changed how, when and where people work. A large and growing number of individuals now work from their homes, either as employees or independent contractors. Reward systems have been increasingly tied to results.

The environment around the workplace has also been transformed by major new trends. In recent years the problems of mushrooming spending of governments at all levels and overloaded legal systems are finally starting to be addressed in a serious manner. The free trade agreement and the ensuing steps towards an open global economy have forced businesses to become more competitive not only in pricing but also in quantity and innovation.

Our laws and regulations must change with the times. We must make it more attractive for employers to have employees. In the face of onerous payroll taxes and an

administrative burden inflicted by various governments on those with employees, it is no wonder that employers aggressively minimize the number of people on their payrolls.

Getting to the specifics of Bill 49, we will comment on eight aspects, together with rationale, that support our positive view of the proposed legislation.

(1) Non-union employees must choose between the courts or the Ministry of Labour in pursuing claims. This will eliminate the present duplication of costs and efforts imposed on employers and the government which is funding both systems. It will also reduce the load on employment standards officers and the judicial system. We understand that all claimants will be given adequate notice of the need for this choice and how to proceed under the new rules.

(2) Where there is a collective agreement, complaints must be dealt with under available grievance procedures and not through the Ministry of Labour. Again the duplication of costs and efforts will be eliminated and the load on employment standards officers reduced. Since there may be a concern regarding frivolous trips to arbitration, we would suggest that consideration be given to awarding costs at the end of the arbitration process.

1040

(3) Employment standards officers will be empowered to settle claims up to \$10,000 and may do so before a finding that wages are owing. It is our understanding that the vast majority of past complaints has fallen within this range. Since the larger and more time-consuming claims will go through the courts, the number of claims settled by each employment standards officer should increase.

(4) Claims must be filed within six months and orders made within 24 months of a claim being filed. The current time limit of two years for filing claims can be problematic, given that the ministry will have up to 24 months to issue an order after a claim is filed. Memories fade and it becomes more difficult to gather facts and witnesses as time passes. Given the number of business failures in today's economy, it is in both the employer's and employee's best interests to have the matter resolved quickly. We support the move to put guidelines in place which encourage quick resolution rather than have the parties drag out the process and thus increase costs.

(5) Simplified language: It makes sense that both employers and employees must be able to understand the rules if they're expected to abide by them.

(6) Appeal period extended from 15 to 45 days: Fifteen days is not enough time to obtain independent legal advice and carefully consider the merits of an appeal. Given more time to deliberate, there should be fewer appeals.

(7) Use of private collection agencies: It is our understanding that only one third of claim awards is actually collected and that in recent years the employment standards officers were responsible for this function. Collection work requires specialized skills and much time and effort for follow-up. For the sake of the employees, it seems very worthwhile to turn this responsibility over to professionals with a strong financial incentive to deliver better results. Of course, this would also give employment standards officers more time to address new and pending claims.

(8) Pregnancy and parental leave included in the calculation of length of employment and service: This clarification of the Employment Standards Act is worthwhile and clearly a benefit to employees.

In summary, we support Bill 49 because it will streamline processes that will benefit both employers and employees. We don't agree with those who suggest that minimum standards are being reduced by this bill. Looking forward to the second phase of this process, we thank you for your time and attention.

Mr Jean-Marc Lalonde (Prescott and Russell)
Thank you for your presentation. It is my first time in Belleville, even though I stopped over at the motel near the 401 before. The directions that I got from one of your gentlemen — after stopping in many places this morning to find this place, the guy from the auto body shop could be hired by the town as a tour guide because he really knew where to send me.

I have a few questions. What will this bill do for your business community?

Mr Chambers: As I stated in the first few points, the duplication of costs and efforts or the potential duplication for employers will be eliminated. For people seeking to have claims resolved, hopefully the claim settlement and collection rate will improve. Basically, the eight rationales that I've outlined should all benefit our community.

Mr Lalonde: If we look at the employer's side definitely it would be a booster for the employer. Do you think this bill will help bring in new industries or businesses to the community?

Mr Chambers: I don't see it directly affecting our community or another in Ontario. It's an Ontario-wide bill so I'm not sure it would change it for Belleville, but I think it would make it more attractive for employers to have more employees in our community.

Mr Lalonde: The dark part of the bill, I would say, is that I wonder what's going to happen with the quality of family life, the fact that there will be no limit, if agreement is reached between the employer and the employees on the number of hours that could be worked by the employees. In the past we had a maximum of 44 hours and today there will be no limit. The danger is that the quality of life for the family could be affected. We know that people like to get more and more money. The father and the mother are at work very often and they're trying to work extra hours. The fact that they will not be working overtime, employers might ask the employees to work more hours. Will the quality of life be affected?

Mr Chambers: I'm not aware of that situation about unlimited hours. I'm not sure where that comes into play in this bill.

Mr Lalonde: It does.

Mr Chambers: I haven't seen that.

Mr Rollins: Gentlemen, thanks a lot for making presentation on behalf of the chamber today. I notice that one of the things you mentioned in here is a lot of home regulated businesses. Is there any effort by the chamber to be in touch with those businesses that run out of the homes, not the big, corporate giants like Sears or Northern Telecom and a few of those but the small individuals? Is there some effort to be connected with

those people to see what the chamber and/or this bill can help out with?

Mr Chambers: I'm one of those people. We aggressively seek out members, and of course the larger groups have been members for some time. We have 530 members now and I would bet that 450 or more are in the smaller category and probably 100 or more are home-based. There is a lot of growth in terms of potential new members in home-based business so we have people who aggressively seek those people as members.

Mr Rollins: Has your membership that you represent stayed pretty constant for these small businesses in the community?

Mr Chambers: We've actually managed an increase in the past year and I think that's because the number of businesses is increasing. They're not large but they are more in number, and hopefully some of those will succeed and grow into medium- or large-sized companies at some time. We really think it's great that there are all of these startups, because the more people who are trying to accomplish something, the more successes there are going to be.

Mr Ted Chudleigh (Halton North): Thank you very much, Mr Chambers, for your presentation today. You mention that we're entering into changing times, working at home and working in different environments. I would point out that this act does not in any way reduce the standards of the number of hours that you have to work or that you might work. There are opportunities to agree with your employer as to what those hours might be, but most of that has been put over until next spring, when the entire act will be reviewed.

The point of education of what the standards are and how it affects — in one of my previous lives I ran a trade association. If I put on a seminar to teach employee standards to various companies, I might get two or three companies in the room, but if I put on a seminar bringing new equipment into the environment, I could get probably 75 to 100 companies in the room, particularly if that machinery was to reduce labour. You mentioned that this bill may make it more palatable for small companies and small businesses in particular to hire new employees. Could you elaborate on that point a bit?

Mr Chambers: In general, in small businesses the biggest complaint I hear all the time is the administrative burden and having to know so many complicated rules —

Mr Chudleigh: Bureaucracy.

Mr Chambers: — and the cost of payroll taxes and government in general. So whenever you reduce that burden, you're making it more attractive.

1050 There is a trend I can see towards subcontracting or part-timers or just hiring independent service bureaus because you don't get into all of that bureaucracy and you don't need to know all the labour rules and so on.

The Vice-Chair: Thank you very much for your presentation this morning.

KINGSTON AND DISTRICT LABOUR COUNCIL

The Vice-Chair: I would ask that representatives from the Kingston and District Labour Council come forward, please. Good morning, sir.

Mr Charlie Stock: On behalf of the Kingston and District Labour Council, representing approximately 8,000 members, I thank you for the opportunity to express our views in regard to Bill 49. We wish to inform you that our organization is in full support of the Ontario Federation of Labour's brief which was presented at an earlier hearing.

We're also disappointed that the committee chose not to come to the home of Sir John A. MacDonald, 50 miles down the road. I'd have to suggest it's probably the first time a committee has come this close to our area and not stopped in our city.

To suggest Bill 49, as the labour minister states, "facilitating administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures" as housekeeping issues clearly makes a mockery of changing a system which indeed has served both management and workers fairly well.

We're pleased that the minister has removed the issue of flexibility in the bill. If that were to happen, more friction would certainly be created. Collective bargaining is tough enough without putting more roadblocks into the process.

We certainly would like the whole bill to be withdrawn for some very simple reasons. To assume that employers will take into consideration the interests of employees ahead of their own or those of business is akin to rearranging the deck chairs on the Titanic. It would be a real tragedy.

There are some — not all — employers who are blatantly abusing their workers now because they know the enforcement of the law has been removed to a large degree. The idea of lessening rights for workers in Ontario will quickly send a message to bad employers to exploit their employees. A shining example of this is the Screaming Tale located here in Belleville — an employer with the audacity to have staff work for tips only.

The Kingston and District Labour Council receives telephone calls on a regular basis from people who've been dismissed or treated in an unfair manner by their employers. I commend the Ontario Federation of Labour for creating the bad-boss hotline, which quickly informed us that Kingston was not alone in having workers complaining about their employers.

In our opinion, there are two major problems in regard to employment standards in the province of Ontario: enforcement of the current legislation and a total lack of job creation, therefore removing employment opportunities.

Working people in Ontario deserve a better fate than having their rights in the workplace diminished in a race to the bottom as the government currently moves to pay for tax breaks for the wealthy by shrinking the size of the Ministry of Labour and others to achieve the \$10 billion required from the budget.

If these changes are what working people in our province are looking for, then I must ask, where are the workers today who agree with the position your government has taken? How many presentations have you listened to from employees who think they have too many rights in the workplace?

The chambers of commerce obviously will champion this legislation because it clearly strengthens the position

of their membership over their employees and, as previous speakers noted, reduces the load employment standards officers have. Indeed, the government is reducing the number of employment officers themselves.

The Kingston and District Labour Council suggests the government listen to the workers of Ontario, stop the process of eroding standards, stop creating roadblocks to obtaining these rights, making it necessary to bargain rights, and change your plans of privatizing enforcement by contracting out. Clearly, if your government would dedicate more time and resources to creating employment opportunities, the climate of this province would change from mean-spirited to a brighter future.

In closing, a short while ago there was a drug bust in Kingston involving several young people, and the local media interviewed a teenage girl for her reaction. She stated, "When you get up in the morning and there's no food in the cupboard, you have few choices. You can look for a job and find out there are none; you can panhandle for change; you can sell your body; you can deal drugs; or you can starve."

Let's give our children back their future. Start by treating all people in Ontario in a fair manner. Quit removing the rights of working people to be governed fairly and get on with the task of job creation.

As an addition, a previous speaker was asked about the employment situation here in the community. I'd have to ask the people in Belleville, why would Wal-Mart have located here if the employment situation and how workers were treated was so bad to start with?

The Vice-Chair: We have up to five minutes per caucus, starting with the government side.

Mr John R. Baird (Nepean): Thank you very much for your presentation. We appreciate your coming from Kingston.

I would just indicate, when the committee made its decision on where it could travel, we were able to go to about 10 communities. Regrettably, we can't go to every one. I think there was certainly a feeling that it's important though — usually committees do go to Kingston — to spread it around. Other communities want to be heard from as well. As someone from eastern Ontario, someone who's lived in Kingston for four years, I certainly know it well, but there are other communities that wanted to hear from the committee as well.

I would just point out that no employment standards are changed by this bill. The minimum wage stays the same, the hours of work stay the same, overtime etc. None of them are changed by this bill.

Particularly with respect to your comments on job creation, I completely agree with you. That's got to be the priority, definitely. It's got to be the first priority, the second priority and the third priority.

I was pleased to note that last week Statistics Canada, of the federal government, released the job creation numbers, and the provincial economy — not the government — had created 51,000 jobs in the province of Ontario, which was an incredible upswing and certainly a good sign. Much work is still to be done, no one is satisfied with the system now, but 51,000 jobs in one month is certainly good news for folks all around the

province. We've obviously got to work harder and do better with that, though.

One issue I'd bring up — and this is a major part of the bill — to get your comments: One of the provisions of the bill, and you alluded to it, is with respect to privatizing collections. Right now we're only collecting 25 cents on the dollar. Once someone complains, an issue is investigated and an order is issued, we're only collecting 25 cents on the dollar. The previous NDP government disbanded the collections branch at the Ministry of Labour, discharged 10 employees and just threw that out to the backs of employment standards officers. They were only able to collect 25 cents on the dollar and we are only able to collect 25 cents on the dollar.

What the minister is saying very clearly by putting in this provision for private collection agencies to go after what I call the deadbeat companies is: "Listen, we're not satisfied with 25 cents. We've got to take some real action to change that. Just tinkering isn't enough."

If there were any easy solutions, I suspect they would have been tried by any of the three parties that have certainly grappled with this issue. Do you have any objections to the use of private collection agencies if they're able to bring in more for workers?

Mr Stock: If the people you currently have in the Ministry of Labour were allowed to do the job of going after employers when the employers were putting it to the workers, I'd think that was a good system. If you want to modify that, that's fine. Contracting out is a race to the bottom, in our opinion. If you want to privatize and run the province like a company would, from a boardroom, as opposed to having set rules for employers and employees and doing it in a fair fashion, I don't think it works out when you start privatizing, because the people who are being contracted are there in particular. They're not there in a fair manner; they're there certainly for the interests of one party. I think you have to have fairness in a system if the system's going to work. I believe that by contracting out, not just that but any service, you're taking that fairness aside.

Mr Baird: But we're only collecting 25 cents on the dollar now. If there was an easy way of improving that surely the previous government — Mr Christopherson who's a member of the committee, is a very fine person — a very passionate advocate for workers. If there was a way of getting better than 25 cents, I know they would have taken it. If there was a way in-house to do it, they would have taken it. But the reality is that they're only collecting 25 cents on the dollar. I think the previous speaker said a third of orders; it's actually only 25 cents.

1100

I guess what we're saying is that obviously the employment standards officers — one of the members of the committee used to be one — are not trained in collections. To bring in someone with 25 or 30 years' experience to go after deadbeat companies and to even force the deadbeat companies to pay for the collection — the reality now is that the person who's owed the money has to pay taxes to pay for the enforcement. Under this bill the deadbeat company would have to pay for the enforcement, would have to pay the collections fee. We're amending the collections act in this bill to allow for the

So that's an important thing. I think it will see more dollars going into the hands of workers than we're getting now, and we've got to go after 100%. The minister is seeking changes to the Bankruptcy Act with the federal minister.

Mr Stock: Excuse me. Can I interject here? I'd like some time too. I'd like to suggest that if the government were clearly serious about enforcement of the law, you not only would have gone after the Screaming Tale restaurant here and down the highway in a quicker fashion, you also would have removed their liquor licence, because they clearly were in violation of the law. I think when we start to see the government treating employers in a fast, efficient manner, then we'll worry about some of the other things that go along with that.

Mr Baird: That was closed down very expeditiously. That was dealt with once we received the complaints. The ministry officer enforced the order immediately.

The Vice-Chair: Excuse me, Mr Baird. You've expended your time. Mr Lalonde.

Mr Lalonde: Thank you, sir, for your presentation. I have a few questions. The fact that the government is going to reduce the number of enforcement officers, will this have an effect on your organization?

Mr Stock: It will have an effect on all workers in this province.

Mr Lalonde: In what way?

Mr Stock: If a person has a problem and wants to get it resolved and all of a sudden there's nobody there — you could have the best laws in the world; if you have nobody to enforce them, the laws don't mean anything. If you're going to remove the people from the Ministry of Labour —

Mr Lalonde: This bill states that any union member has to go through their union to appeal or to deposit the complaint to the ministry. By looking at this, the fact that they will be going through your office and then probably hire a lawyer to debate this matter, will this have an effect on the union dues of your members?

Mr Stock: It's going to have an effect. I am critical of the fact that it's just the union you're talking about. It's workers in this province who are getting the shaft, and for the most part the people who are being shafted clearly are people who don't have the ability to have a union representing them. They are low-paid people. They don't have the money and the resources to go and hire a lawyer when they have a problem. They are the people who are getting hurt the worst by this current government and this legislation.

Mr Lalonde: What I could see by this bill is the fact that every union member, as they go through your office, it's definitely going to increase the cost of your operation because you have to handle every claim. In the past five years, would you know how many of your employees had to deposit a claim to the enforcement officer in the Ministry of Labour?

Mr Stock: I don't have those figures, no.

Mr Lalonde: I tend to agree, though, that having the collection passed on to the private sector — as Mr Baird just said a little while ago, only approximately 25% of the amount owed to employees was collected in the past. The only part I am scared of is I hope that the commis-

sion that would go to the collection agency will not be taken off the employee's amount owed to them. Do you agree with this?

Mr Stock: Yes.

The Vice-Chair: Thank you very much for your presentation this morning.

CANADIAN AUTO WORKERS, LOCAL 524

The Vice-Chair: I would ask that the Canadian Auto Workers, Local 524, come forward. Good morning, sir. I'd appreciate if you would introduce yourself for the sake of Hansard and those present.

Mr Ivan Mills: I will start off just very briefly, as part of my presentation: Good morning to the committee and participants here, all interested parties concerned over the possible changes to a very sensitive piece of legislation, Bill 49, the Employment Standards Improvement Act.

My name is Ivan Mills. I am a resident of Peterborough and currently hold the office of vice-president of Local 524, CAW. I am chairperson of the political action committee. The workplace I am employed at is GE Canada. I've worked at the plant for almost 33 years. Hopefully, in the minimal allotted time I can focus on some of the major concerns we have with this bill.

Over the past several months there has been a great emphasis placed on the debt and deficit, both federally and provincially, about the workforce, both organized and unorganized, unions at war with corporations and governments and vice versa. We have, as organized labour, seen the pitfalls and side-effects of a government that to my mind set the pattern for the conflict that is out there every day. The Harris government made quite clear their disdain for the unionized, that unions and organized labour had too much clout, and that they, speaking of the Ontario government, would level the playing field.

We saw what happened with Bill 7, the anti-scab legislation, across our province. Several employers have seen fit to hire replacement workers. People working in their plants have decided that the right to strike is their last resort to a just and fair settlement. What happens here? The answer is confrontation, resentment in a process that we call collective bargaining. It's our right.

Bill 26, the all-encompassing omnibus bill, was then legislated with undue speed. Again, the government of Ontario displayed little or no conscience to the legislation which adversely affects the young and elderly in this province. With only three weeks of hearings on this bill, the government of Ontario, through the Minister of Health, can now be given powers to close down hospitals, deregulate drug prices, introduce user fees and deductibles for our seniors. Currently our local is challenging this part of the new law through our Peterborough MP, Peter Adams. Our members feel this is a violation of the Canada Health Act. The question revolves around the payment for drugs, which now has attached to it an up-front user fee of \$100 required if your income is over a certain amount. This would certainly appear to be an invasion of privacy, when persons' incomes become information for your local pharmacist and drugstore.

Other items of considerable importance have far-reaching effects for the people, such as the loss of skilled

and semi-skilled jobs through massive layoffs in the public sector as well as in the private sector. Environmental laws and protection, which we all know are of great concern, have been either weakened or substantially eliminated altogether. Consequently, the reasons are many that today we speak about Bill 49. To me it is so very important that all the issues are looked at, that everyone concerned in our province and country have their views brought forward and we make things better, not worse, for the people of Ontario. I am sure it is very difficult for a lot of people when all these changes that we face today seem so regressive and we do not trust the people who are implementing them.

The Employment Standards Improvement Act is not without its own major concerns for the people of Ontario. Over the course of time, through collective bargaining, the organized labour movement has made significant gains with regard to equal pay for equal work, paid overtime, pregnancy and parental leave, notification of job loss and termination of employment. These issues and many others are the very reasons this province has been one of the best places in the world to live. To even think that through passage of this bill the workers of this province will have some, even one, of these taken away or altered in a negative fashion is quite frankly outrageous.

Some of these changes will most definitely make it easier for employers to cheat their employees and harder for workers to enforce their rights. It strips unionized workers of the historic floor rights which we have had for years under Ontario law.

1110

When Labour Minister Elizabeth Witmer introduced the Bill 49 amendments, she stated the proposed alterations were housekeeping changes. The truth of the matter is again that they are not minor changes, but they're rather substantive changes that are clearly beneficial to the employer, not the worker.

Organized labour has fought long and hard for the reduced workweek. Normal hours of work range between 40 and 50 hours. Why then would anyone want to increase this to, say, 56 hours? I'm aware that Minister Witmer is apparently saying at this time she's backing off on this, but can we really trust her, having seen this government's track record so far? If the government is sincere in its jobs, jobs, jobs statement, why would this even be a consideration? Corporations should be penalized for excessive use of overtime; thus, hire more people. Specifically, in my plant today we have undergone hundreds of layoffs, yet right in areas where these have occurred, people are working six and seven days a week. Emergencies can happen, scheduling or material problems can periodically create overtime, but in general there's no need for this to take place. In today's environment it is imperative to have quality time off, not working 60 hours a week at the shop.

Also at issue here are part-time minimum wage jobs, the majority of which people work at in places where there is no union to help them to better their lot. I am sure many of us know people, especially the younger generation, either still going to college or just starting out in this working world, who hold two or three part-time jobs. Is this what is termed "quality"?

As mentioned before, floor rights, those things which were legislated, will now be put on the bargaining table again. It will make settlements more difficult to acquire, given the inequality of power between employers and employees. This is even more magnified when many workers not organized have to take their employers on. Laws today with minimum standards at least help these people. Having these taken away or watered down will only make for more strained relationships.

Another major concern facing workers today is the time frames, when people have either quit or changed employers, in regard to back pay, vacation entitlements, severance packages etc. Under the proposed change, an employee will only be entitled to back pay for a period of six months from the time a complaint is filed. This makes things particularly hard for someone who registers a complaint only after they have severed their employment. If they do not file within this time, their only avenue of recourse is through civil court action, which can be long and arduous.

Further to this, the Ontario legal aid plan, which at one time could be utilized by employees, no longer covers most employment-related cases. The ministry then still has two years to investigate the complaint and a further two years to get the employer to pay moneys owing. Considering all of this, the employee has a long uphill battle to attain any satisfaction.

In conclusion, I feel the Ontario government has continued to rush to judgement on many issues regarding legislation in this province. Workers organized, unorganized, young and old deserve better working conditions. The corporations, employers, small businesses and large, are most turning record profits. The people in workplaces across this province deserve better, not worse. For us, the struggle continues. We shall prevail.

Thank you for your time. Hopefully your Common Sense Revolution will make some sense to the workers and all the people who reside in what still has the potential of being the best place to live in this province, country and world.

The Vice-Chair: We have just over a minute and a half, so there's time for each of us to have a question.

Mr Lalonde: Thank you, Mr Mills. You've been with the company GE for 33 years, you said.

Mr Mills: Yes, sir.

Mr Lalonde: At the present time, is there much overtime done by the employees in your plant?

Mr Mills: To be quite honest and very frank, it's been an issue that's ongoing for many years. It's been a tough one for us. We many times have gone to the ministry for help here on this one. As you know, we can go and ask for the 100-hour lists that they have on persons working but it's an ongoing thing that the company uses. It's a real tough nut for us to crack. Again, it's one of those laws that if legislated, if followed through on, would be a real boon to unions and workers.

Mr Lalonde: At the present time, any hours done after 44 hours, you were getting overtime, time and a half.

Mr Mills: Yes, that's right.

Mr Lalonde: But the fact that they're planning to pull this section out to leave this to the employers, do you

think in the time that we're trying to create 725,000 jobs, this will help create additional jobs?

Mr Mills: My honest opinion of this is that there are a couple of things that enter into this. It's very critical, especially for our plant. I'll tell you that it's a very senior operation inasmuch as the employees' average age is approximately 48, a very experienced workforce, but the issues are that these people have the skills, but there's a training issue, bringing young people into these jobs — I don't think we're fulfilling that need to train young people, because of this kind of activity that's going on. We're not able to bring new people into the workforce. When you have individuals, senior people working on jobs and working seven days a week, and you're not bringing people along to help encourage and train, I have a lot of problems with that.

Mr Lalonde: They do that —

The Vice-Chair: Excuse me, Mr Lalonde, I'm sorry. Good morning, Mr Christopherson.

Mr David Christopherson (Hamilton Centre): Good morning, Barb.

The Vice-Chair: Welcome to the hearings here.

Mr Christopherson: Thank you. My apologies to the committee and to the presenters for being unavoidably detained.

Mr Mills, thank you very much for your presentation. I was able to catch up on the first part as you were concluding. I think you are reflecting a mood and a tone and a message that we've heard all across Ontario. This is a government that, you should know that, even after presenter after presenter has pointed out where Bill 49 is taking away rights, we have the history of the anti-worker Bill 7, which devastated basic fundamental union rights in the province, they've attacked WCB, they're continuing to do that further, we know they're going to attack the Occupational Health and Safety Act, they've already attacked the poorest of the poor with a 22% cut and yet this government still wants people to believe that Bill 49 doesn't take away any rights.

There are a couple of major issues that aren't here but that are important. There's now a cap on how much money can be claimed — it didn't exist before — there's going to be a minimum threshold that you have to pass before you can get the ministry to help get that back money, and the one that you point out here, where you can only go back six months, and yet this government still, in community after community, says Bill 49 doesn't take away workers' rights. How do you respond to the government while they're sitting here, when they continue to tell you that this doesn't take away any rights of workers?

Mr Mills: Again, the reason I'm here today is representing my people in Peterborough, and I know that in talking to others across the province that quite clearly, the erosion of our rights in the organized workplace has been devastating; there's no question about that. Having said that, that can only reflect twofold, threefold on people who are out there without some people fighting for them, without the individuals on executives or labour councils which are very active in this. Without these people, they have nowhere to go, and believe me, they don't have the money to go get help. That I feel is very, very sad.

Mr John O'Toole (Durham East): Thank you very much, Mr Mills, for your presentation this morning. You're right; we've heard many of the arguments you've presented at previous public meetings, and they're not a tremendous surprise. Focusing on page 3, do you think that your membership in your union want the leadership to eliminate the individual's right to choose to work overtime? On page 3, you go into it.

1120

Mr Mills: Yes.

Mr O'Toole: Do you think the membership strongly supports the leadership with the mandate to eliminate their individual entitlement to overtime?

Mr Mills: This is, as anything, a very sensitive situation. To best present that, I would have to say that the numbers would be probably much stronger. I really legitimately feel people are concerned about the numbers of people who have lost jobs, for what reason. Right next door are a number of individuals working overtime.

Mr O'Toole: If I may, I appreciate that —

The Vice-Chair: Excuse me, Mr O'Toole, I'm sorry to interrupt, but time has expired. We're actually over time.

Thank you very much for your presentation this morning.

TRENTON AND DISTRICT CHAMBER OF COMMERCE

The Vice-Chair: I'd ask the representatives of the Trenton and District Chamber of Commerce to come forward, please. Good morning, and welcome to our process here. For those who have come lately, I'll just outline what the procedure will be. There's a 15-minute allocated time, as people know; that will be inclusive of the question-and-answer period at the end of the presentation. I would ask that the board members help a little bit in making sure that we offer the same opportunity to everybody here today by taking note of the time that's allocated when we get to the question-and-answer period. Thank you very much, and I would ask that you would introduce yourselves for the sake of Hansard and those present.

Mr Paul Tripp: My name is Paul Tripp. I'm a past president of the Trenton Chamber of Commerce. Our presentation will be made today by Joan Kingston, who is the manager of the Trenton and District Chamber of Commerce.

Ms Joan Kingston: Good morning. The Trenton and District Chamber of Commerce welcomes this opportunity to speak to this committee on these important issues. As background information, let me say that our chamber covers an area from Brighton to Bayside and Carrying Place to Frankford. Our membership consists of some 200 businesses, ranging from large international employers with over 200 employees to small, home-based businesses. Over the recent months, we have been circulating information on the proposed changes to Bill 49. We provided our members with opportunity to comment on the changes and only received positive responses.

A subcommittee was formed in August of this year consisting of representatives from major industry, small

business and home-based business. It is our collective opinion that we support the thrust of the legislative changes.

With respect to limitation periods, we agree with the changes to a six-month period to file claims, the payment of back wages and the increase of appeal periods. These changes propose reasonable time periods that are more in keeping with the real practices of day-to-day workloads.

In today's workplace, entrepreneurs and business owners are having to work longer and harder to stay competitive and profitable. Time spent away from the business is detrimental not only to the owner but to the employees as well. Limiting the choice of procedure from both the ministry and courts to either process will decrease the time spent in dispute and the expense to the parties involved and our public purse.

This expedition of time and resources is reiterated again in the legislation's proposal to have the employment standards officers negotiate a resolution to complaints without launching a full investigation. In many cases, the outside third-party arbitrator is all that is necessary to settle the small claims. As our government performs necessary downsizing and increases the workloads of its employees, we must support legislative changes that will support these same employees in expediting their jobs, to the savings of both time and money.

A policy of this government that is strongly supported by business is subcontracting out work that can be completed more efficiently by the private sector. This policy is supported by us in this legislation under the section on collections. This particular job is more suited to the private sector and will once again free the time of the employment standards officer for investigations. The remainder of the proposed changes follow the same thrust of making the act easier to administer, fairer to all parties and more in keeping with today's economic climate and electronic workplace.

In closing, we support the essence of Bill 49 as it attempts to reduce procedural stumbling blocks and reduce the cost of doing business.

The Vice-Chair: We have about 12 minutes to go here, starting with Mr Christopherson.

Mr Christopherson: Thank you for your presentation; I appreciate it. I want to pick up on a theme that I raised with the previous presenter. Virtually all of the chambers of commerce across Ontario have been marching side by side with the government in arguing that Bill 49 doesn't take away any rights at all that workers already have; it merely changes procedures, makes them more efficient, deals with the new structure of work etc.

I would like to ask you if you think the fact that an employee can no longer claim back wages for two years but only six months does not take away a right that they have, especially when we've heard many presentations point out that 90% of all claims are filed after someone leaves the workplace, because they're too afraid to do it while they still work there. By having two years, they've got enough time to secure another job, leave the threatened work environment and then file a complaint after the fact and go back at least up to two years to collect the money that's owed. That will now be limited

to six months. For a lot of people who can't leave their place of employment for fear of losing their job, it means they're going to lose that money, because they can't afford to hire a lawyer. I would ask how you would react to that argument and still defend the government's line that this bill doesn't take away any workers' rights.

Mr Tripp: The point you're making, very simply — the chambers of commerce, I believe, and I know it's the case with ours, believe this legislation is levelling the playing field entirely; it's taking a position that business has some rights, that management has some rights, which have been eroded over a long period of time.

One issue you're bringing up, a six-month back pay as opposed to two years — I'm not about to get into the semantics of six months or two years or what have you, but I do believe that if there's a legitimate claim on back time, I don't see that it's a hardship within a certain period of time to file a claim and proceed in a normal manner.

Mr Christopherson: The problem with that is that we have heard ample evidence — and I haven't heard the government refute that this doesn't happen; I've challenged them to do so, and they haven't, for good reason: you can't. The facts are that there are people — and I'm sure it's a very small minority of your membership, I would offer that to you, who would be that way. But there are bad bosses, just like there are bad employees. That's why you have rules; that's why you have laws. But this bill, not only on the six months but on the cap — an employee can no longer claim for more than \$10,000 through the ministry. The government is going to set a minimum threshold that you have to be owed maybe it's \$100, maybe it's \$500. We don't know. They won't tell us. They won't tell us how much the minimum is going to be, but there will be a new minimum.

These are not semantics, sir; these are the rights that workers have. Without a union, the only right a worker has against a bad boss is the Employment Standards Act. I say to you again that this is not about levelling the field; this is taking away the rights of workers.

The Vice-Chair: Mr Christopherson, your time has expired, without a question.

Mr Rollins: Thank you for your presentation this morning. Trenton has been one of the hardest-hit areas in the province of Ontario for losing businesses over the last three or four years. Do you see any recourse, that it look as if there may be some more jobs coming back in? Will this be a little more encouraging for small businesses to come back into the Trenton area?

Mr Tripp: I think it will be, and I think there is slight turnaround. I guess if you were to take, on percentage basis, our job loss of two or three years ago when the economy went for a row of shucks, if I can be permitted some slang, this would be equivalent in the Metropolitan Toronto area of half a million jobs. That's how hard we were hit. We had major plant closings and what have you. A lot of those closings were the result of decisions that were affecting the international marketplace.

The one good thing that we have had in our favour recently is that as they downsize the defence department we happen to be one of the few cities left that has

defence installation. There's been an increase there, and this is now starting to manifest itself in the economy for small business and small entrepreneurs.

1130

Mr Rollins: Getting back to the time frame of the six months and the two years, a number of those companies have gone. They didn't just move out, they went bankrupt, they washed out.

Mr Tripp: Oh, yes.

Mr Rollins: Regardless of whether there were judgments against them or not, there was no money to pay them. When you're broke and you're out and you're done, then you're out, you're broke and you're done. Whether it's six months or two years, there's still no more money coming back to the employees who got beat out of things. I don't think anybody wants to see anybody beat out of anything that's justly coming to them.

Mr Tripp: I don't think so either. I know in a number of our cases it was a financial reason; that was all there was to it. If there's no money, there's no money.

Mr Rollins: If you're broke, you're broke.

Mr Tripp: That's right.

Mr Chudleigh: A lot of the problems that we encountered and problems that we've heard about seem to revolve around education, that people don't know what's in the standards act; employees don't know what their rights are; employers quite often don't know what their responsibilities are.

Could you give us any indication as to how you might see getting this information out into the employment field so that more people would know about the Employment Standards Act and their responsibilities and rights under that act?

Mr Tripp: I wish there was a simple answer to that question. People read what they want to read and ignore what they don't want to read. I'm a member of a service club. I can go to a weekly meeting and have people who didn't even read the weekly bulletin. That's a fact of life, and that's the way it is.

I think in recent times there has been such a competitive pressure in the business world that people just don't have the time to read up on things that they might have done a few years ago, and this isn't anything to do with the government of Ontario or the government of the city of Trenton or anything else. This is just a fact that's happening in the world. I guess very simple newsletters to the management and to the staff would be helpful.

Mr Lalonde: Mr Tripp, you say you represent some 200 businesses, including large employers such as Quaker Oats. Do any of them belong to organized labour or unions?

Mr Tripp: Not the business world. A business can't belong to a union.

Mr Lalonde: How about Quaker Oats?

Mr Tripp: Quaker Oats is a manufacturing plant. They had a union there some years ago and the workers voted it out. Then the dog food operation went down to next to nothing. It's now come back as a manufacturer of rice cakes.

Mr Lalonde: So there's no union that has approached your organization to speak on their behalf at this hearing today.

Mr Tripp: No.

Mr Lalonde: Looking at the maximum of six months that you could come back for some claims, the government is saying only 4% of the total amount in the past was — the total amount owed to employees was over \$10,000, but 4% could represent a large amount of money for the family.

I'd like to get your opinion on that. Don't you think it should have been from two years to one year and been up at least to \$20,000 instead of \$10,000? Because in the past you were able to go back two years, and 4% of the total amount was over \$10,000. It means that some of the employers that have not been good employers — I've always said all employers are good but some are better than the others. But the fact that now you'd be able to go back only six months — what's going to happen with those employers that didn't pay the employees properly for over a period of six months?

Mr Tripp: I think we already dealt with that earlier and the question still remains, in particular in my own municipality where the loss of jobs is economic. Time is of no consequence because, as I replied to Mr Rollins, there's only so much money and if it's not there, it's not there. I think that's been the biggest problem.

Mr Lalonde: The fact that you represent 200 businesses, do you think that the employment standards must be posted at every employment office or business so that the employees would know what they are entitled to?

Mr Tripp: I can tell you, sir, that in my opinion, and I was in the business world for 40-some years, you can post all the notices you want on all the bulletin boards there are, and if people don't want to read them or pay attention to them, they won't.

Mr Lalonde: But at least it should be posted.

Mr Tripp: What's the sense of posting it if it's just not read? My point, very simply, is that usually things get read when we're in times of distress, but when things are rolling along fine — that's the way it is.

The Vice-Chair: Thank you for your presentation this morning.

NORTHUMBERLAND COMMUNITY COALITION

The Vice-Chair: I would ask that representatives from the Northumberland Community Coalition come forward, please. Good morning. I'd ask you to introduce yourself, please.

Mr Ben Burd: Good morning. My name is Ben Burd and I work and live in Cobourg. Before I start my brief, I'd like to draw attention to the couple of statistics on the front page, which were drawn from last week's Toronto Star. Basically there are two quotes there that are important because they put into context what I'm going to say: "The number of people earning the minimum wage has risen 40% in the last five years." That was drawn from Ministry of Labour statistics.

"The number of people working for temporary agencies has risen 421% in 25 years." That was drawn from the Centre for International Statistics.

Ever since the industrial revolution, governments have been forced by public opinion to legislate employment standards. From the minimalist approach of the Third

World to the encompassing standards of the European Community, standards differ, but the reasons for the standards has not. Standards exist because some employers exploit and because workers, being voters, demand them. In real practice, both employers and employees benefit because stability has been brought to the marketplace. This stability means that workers know what to expect as working rights and employers know what the fixed cost of doing business really is.

For any government to contemplate change to existing employment standards, it must be either acting on a demonstrated need for change by the stakeholders or introducing its own ideas of standards. Either way, the need for change must be well explained or the government will be seen by the public to be reacting to vested interests or pressure groups. In the case of the changes we are here today to discuss, we submit that it is the latter, as we see no move by the public to change standards. I ask the committee and the government that's bringing this in place, where is the evidence that standards need to be changed?

The cornerstone of any legislation is the ability to make it work, for dormant legislation is just as bad as no legislation. Consequently, we believe that the enforcement of employment standards is the key to good legislation. Minimum standards must be set at a level that will sustain the maximum workplace protection of health and safety as well as ensure the economic maintenance of a living wage.

A compromise must be obtained between the employers' ability to pay and stay in business and the cost of employment standards. At the moment there are not enough inspectors in the field to enforce current legislation. Recent Ministry of Labour budget cuts have resulted in fewer inspectors — and I might be wrong on these numbers but the thrust is there — from 156 to 127 on the job. That's for the whole province. We submit that the proposed changes will need more enforcement because the threshold of enforcement will now be lower and infractions will become more frequent as unscrupulous employers will ignore the now reduced standards.

This new government in Ontario quite rightly identifies as one of its roles, one that it is eschewing, that of being able to mould society by means of regulation. The dilemma of the government is how to make the economy grow and make taxpayers feel good enough to become consumers again. This dilemma is compounded when the fact that safe workplaces and regulated wage rates contribute to the wellbeing of the economy has been accepted for some time.

In these changing times it has become fashionable to accept the global economy but be fatalistic about the chances of upward mobility. However, if society is to improve and be able to pay for the services that it demands, economic growth must occur. Economic growth occurs in many ways under many influences. One of these influences is the regulatory path set by governments. Employment standards as a whole is a tool for growth. Too many impediments on employers and you will stifle business; too few regulations and you will have unhealthy and unsafe workplaces, which will impact on the consumers of the economy.

However, there is a leveller for employers between regulations and non-regulations, and that is the cost of unhealthy workplaces due to accidents, disease and insurance payments. The government can ease the cost of this leveller by regular inspection of workplaces. Regular inspection will raise standards and cut costs to employers. Despite what some employers may tell you, we think safe workplaces and regular enforcement saves money in reduced WCB costs, reduced sick time and improved productivity due to safe workplaces. To quote the Common Sense Revolution, "Workers need a hand up, not a handout." Give them this hand up by ensuring safe workplaces and regulated wage rates.

Free marketeers believe that market forces will self-regulate the economy, but in real life the theory does not quite fit the practice. Market forces dictate that the price of anything, including labour, goes up and down due to demand. We have seen this happen in the case of labour costs: As unemployment rises, wages go down. Real wages have been falling yearly for the past 20 years due to rising unemployment. The pressure upon the private sector to be competitive has wreaked havoc among the unskilled and semi-skilled workers of this province as automation and downsizing have been implemented by the private sector. Most of these moves to be competitive have resulted in two things: the reduction of costs, mainly due to lower wage costs because of the downsizing, and the increase of profits.

Any impediment in the workplace in the form of regulations, for whatever reason, is seen by the private sector as a barrier to efficiency and profits. The role for governments is to balance the interests of the marketplace and the interests of those who work in the marketplace. The opinion here at the NCC is that one need not be balanced against the other because safe workplaces and high minimum workplace and employment standards produce efficiency and profits in their own right. The payoff to the private sector is in the form of employee productivity based on working in a safe place and earning enough to be a productive consumer and taxpayer. When the Canadian Imperial Bank of Commerce announces it wants to lay off 10,000 people, who will pay the service charges the banks need? The bank doesn't seem to question the possible damage to 10,000 mortgages.

As social commentators, we have to point out that if the goal of minimizing standards in the workplace is there because it is believed that the money saved by the private sector will be recycled to improve the economy in the form of more jobs, one has to question both the logic and the economics. This approach, deregulation, has been tried before, and the damage to workers and the economy was repaired by the use of the very regulations that are now being repealed.

1140

As to the economics, it boggles our mind that the drive to lower real wages, either by reducing minimum wages or by wage negotiations driven by downsizing pressures will only lead to lower disposable income, which in turn leads to lower consumer spending, which in turn leads to lower economic growth, which is the opposite of what you're trying to achieve.

If, in this world we are forced to live in because we have to be competitive, we only have the opportunity to work and use our learned skills, then that opportunity has to be there. The right to work and pay our way is inalienable. Society, if it does nothing else, has to create the conditions that will allow each and every person who wants to, to work, for only by work can we earn enough to pay our way in this world. If the economy, as currently tuned by our present government's economic policies, can only produce so many hours of work, then those hours must be used by as many people as possible.

The major tool that must be used by government to spur the economy is the initiation of a shorter workweek. Allowing unions and companies to set their own workweeks by mutual agreement will lead to longer workweeks, not shorter workweeks, and that is wrong. It is wrong because if the secret to greater wealth is to have more people working, you do not do that by expanding productive capacity and not sharing it. The only conclusion we can draw from these discussions today is that governments must influence the marketplace so that as many people as possible can work.

Today, as we speak, there are major companies engaged in labour disputes over the enforcement of mandatory overtime. In a period of double-digit unemployment, that should be a crime against humanity. Your legislation, if it goes through, either amended now or later on in the fall, when, we are told, we're going to get larger revisions to the Employment Standards Act, will make it easier to abolish the maximum workweek. Imagine, in one passage of legislation you can take the workplace back 100 years.

If our presentation is to be positive, then it is incumbent upon us to make suggestions. The one major suggestion we make is that the province change its attitude and join with us and ask the federal people to remove the maximum level of earnings from the CPP and employment insurance premiums that are paid by employee and employer. By the way, we do not subscribe to the notion that these social payments are payroll taxes, the common name for UI and CPP premiums. Since when have employment insurance or pension contributions been considered taxes? If these plans were privatized, as some governments want to do, the contributions would certainly not be considered taxes but social benefits that have to be paid for by both labour market partners.

Removing the maximums from CPP and UI would have the effect of allocating the overtime hours that are now being worked to new hires. This disincentive to overtime will lead to the creation of new hires because contributions to employment insurance and CPP will be paid on all hours worked, not just those under \$33,000 of the CPP and those under \$37,000, I think it is, for UI.

One last comment on payroll taxes: This money paid by business is a usual business cost of doing business, just like others such as rent, insurance, medical benefits etc, and as such should be treated the same way as others are in business plans.

In conclusion, the Northumberland Community Coalition cannot support the intent of the proposed changes for all the reasons that many others have listed. The major

problem for us is the abandonment of the regulation of business by accepting that mutual agreement between employers and unions is an acceptable process. Having minimum employment standards is like being pregnant: The package has to be complete and concise or nothing at all. The idea that government can stop being in bits of the business because there are others who can do a better job may work in other areas, but definitely not in the area of employment standards. Because of the social effects on consumers and taxpayers of having employment standards, we at the coalition do not want any changes that weaken the current standards because we think that they are barely adequate now.

What we want is to retain the present system and for the government to hire more inspectors so that the present standards can be enforced properly. Only then will workers feel safe in the workplace and will employers be able to stabilize their costs.

Mr Baird: Thank you very much for your presentation. We appreciate it certainly from a different perspective than many, so it's particularly appreciated. We don't have time for much of a question. I'll just make a few comments.

In the first part of your presentation you mentioned health and safety. That's a very big priority for the minister, so there are no cuts in health and safety inspectors. The previous government chose to cut health and safety inspectors by 21, but Mrs Witmer is not cutting them because she sees it as important.

Mr Burd: The numbers here relate to employment standards inspectors.

Mr Baird: You did mention health and safety three or four times in your presentation, though, and I just wanted to clarify that.

Mr Burd: But there's still a lesser number of inspectors in employment standards now than there was when you came to power.

Mr Baird: In employment standards, yes, because we're privatizing the collections part of the plan, but not on health and safety, which we think is a very important issue.

With respect to moving to a complaint-driven process, I guess we agree with Bob Mackenzie, the previous labour minister who practised the policy that it's best for a complaint-driven process. That means you'll get the best results by having made the best use of your resources. That process has been followed by all three parties. Obviously, though, when there's a complaint like the one at the Screaming Tale, when they go in, they do check the other employees because if the deadbeat employer is doing it with one employee, undoubtedly he's doing it with many others. We believe that's the best way to do it.

Mr Burd: But the intent of this brief was to draw attention to the fact that the absence of inspectors produces an atmosphere where unscrupulous employers can exist and get away with what they're doing simply because the employees who work in those places have little faith in the inspection standards as such, and what you're doing right now is going to reduce those inspection standards.

Mr Baird: It's because we're privatizing the collections component of it, which were only collecting 25 cents on that dollar. So there's where the savings are.
1150

Mr Lalonde: As mentioned by Mr Baird, the government is in the planning of reducing of the number of inspectors. Do you feel that instead of laying off those inspectors, if we were to train them properly so they could continue collecting or taking over claims that are submitted by employees, that would be more beneficial to employees and to the employer?

Mr Burd: I think it's a question of inspectors using the amount of time they have in their workweek to get their inspections done. Mr Baird said that he's going to remove the collection responsibility from those inspectors. I don't know the percentage of time spent by employment standards inspectors on collections. I would suspect it's very little. The problem you have right now is that there are employers and workplaces that have not been inspected in many years, and that's a fact. If you were to go to the average inspector and say, "Let me see the size of your file," you'd probably be astounded. We say, "Do you have time to go back into the workplace to inspect after the initial inspection?" "Oh, yes." "When?" "When I get around to it," some maybe five or six years later.

Mr Christopherson: Obviously you've put a lot of thought into this and have a very detailed working grasp of the legislation and the reality out there. Thank you for your presentation. It's very effective.

I want to make sure it's on the record that we support very much your contention where in the second-last sentence you say that what you want is "for the government to hire more inspectors so the present standards can be enforced properly" and point out that exactly the opposite is happening. They're reducing the standards; therefore there are fewer inspectors needed. That means they're laying off 45 inspectors, that's all about saving money and that's the only thing it's about.

The fact that it's going to benefit unscrupulous employers, the government is prepared to look the other way, but that will be the reality. They refuse to admit it. This is just about slashing money and reducing standards in the workplace. Have I encapsulated your point?

Mr Burd: Absolutely. It's our contention that lower standards will lead to less enforcement because the threshold of enforcement is therefore much lower. If the threshold of enforcement is much lower, people will feel they can get away with more, and more infractions will therefore result, needing more inspectors, but the government is choosing to go the other way. I could live with lower standards if you were going to turn around and say, "We're going to have more inspectors to enforce those standards," but they're doing neither.

Mr Christopherson: Well, get ready for the next round; it's the Occupational Health and Safety Act they're opening up next and they're doing it for the same purpose as this time, and that's about saving money. So there are more rights of workers that are on the chopping block for the future, guaranteed, and we still know the WCB legislation, which is taking away even more benefits from workers.

PETERBOROUGH AND DISTRICT LABOUR COUNCIL

The Vice-Chair: I ask the representative from the Peterborough and District Labour Council to come forward, please.

Mr Thomas Veitch: Good morning. My name is Thomas Veitch. I'm president of the Peterborough and District Labour Council and recording secretary of CAW Local 1987.

I'd like to start by thanking you for the opportunity to appear before this committee today despite the fact that the time allowed is so very limited. The subject matter before us is entirely too vast to cover within a 15-minute period, but I'll endeavour to cover some ground.

What the Employment Standards Act represents is a "bare minimum" document, a framework by which employers are legislated regarding legal provisions of hours of work, vacation entitlement, overtime, equal pay for equal work, pregnancy leave, paid holidays and a whole host of other rights. It is a basic document of how an employer must treat an employee and that employee's rights. The collective bargaining process has managed to improve some of these areas, but what of individuals in non-organized workplaces?

On average, our labour council receives five calls a week from individuals in such workplaces with questions like: "I work an average of 55 hours a week but I'm only getting paid for 30. I don't think it's fair and was wondering what I can do about it." I take down as much information as I can and direct these people to the employment standards branch in the Ministry of Labour, with the advice that the first thing they'll have to do is file a complaint. The response is generally: "I can't do that. It's a small operation. If they find out, they'll fire me. I need my job." I advise them to call anyway and let me know how they made out. The response is generally, "You'll have to file a complaint before we can do anything," so for the most part no action is taken.

The biggest problem is the fact that the current law doesn't have the teeth to walk into a workplace and perform a general inspection of the workplace and working conditions.

Proposed changes will water down this legislation, further removing any rights an employee has within the workplace in the interests of competitiveness. The question that begs to be asked is: Competitiveness with whom? Indonesia, Guatemala, Mexico or the United States, where 1% of the population controls 42% of the work?

The Minister has characterized changes to the Employment Standards Act as minor housekeeping. The flexibility issue, thank God, has climbed back into its cave for the time being, and I'm sure it will rear its ugly head at a later date.

Enforcement: Currently the Ministry of Labour investigates complaints, and why not? The government passed the ESA, so the MOL should investigate. This has proved an inexpensive avenue of benefit to all concerned. Proposed changes under Bill 49 would eliminate this course of action in favour of the grievance procedure placing the burdens of cost and investigation on the

union. It also places the union at risk with dissatisfied members because the ESA will be deemed part of the collective agreement. The obligation of fair representation and enforcement of the ESA will become duties of the union rather than the Ministry of Labour.

As to non-unionized workers, they will have a period of two weeks to decide whether to file a complaint with the Ministry of Labour, under the Employment Standards Act, to pursue it through the court system with a ceiling of recoverable limits placed at \$10,000 instead of what an employer actually owes an employee. This is by no means fair as a remedy since it would take several years to resolve a civil case, at an expense most complainants could ill afford. Many more will be excluded from the process due to lack of awareness of time limits on filing a complaint and they will have no right to reinstitute a complaint if they choose to abandon a civil suit process.

Regarding the cap, employees who have deprived of wages for a lengthy period of time are the very complainants who will have no means to hire a lawyer and wait for years to see a civil suit settled. Even in the most poorly paid industries, amounts owed to severed employees generally exceed the \$10,000 cap with a six-month limit on back pay. This provision will serve to assist the worst employers to violate the most basic standards and compound the misery of such complainants.

Use of private collectors: Proposed amendments include privatization of the collection of moneys owed. Traditionally this has been a public function. Now it will be the function of the private sector. How this will improve the situation is beyond me, considering that the largest problem has always been the employer's refusal to pay assessments. It will, however, absolve the government of any responsibility as it will be "out of our hands."

The director of employment standards can authorize the private collector to charge a fee of the person who owes money, or, should the amount be less than the amount owing employees, regulations enable apportioning among the collector, the employee and the government. Where the settlement is less than 75% of the amount owing, the collector is required to obtain approval of the director for such fees allowing for an incredible amount of leeway or abuse; ie, minimum wage earners could receive less than the amount owed and pay for it to be collected. Fair? I think not. The government needs to improve and maintain the current system, not privatize. Such a move, as proposed, would gravely harm the most vulnerable and unorganized in the interests of expediency.

I would say that a review of the entire act is in order. Housekeeping changes and "changes 'cause we can" are not in order. There is little I can see that would assist any worker in this once proud province. It is geared to assist employers rather than workers. It is one of the few legislated documents that we have by way of protection. Employers have common law and legislate out the yin and yang to assist them in keeping the savage hordes at bay. This government is enabling employers to treat us the way they have always seen us, as a necessary evil, merely tools for profit. Change is necessary to the Employment Standards Act — positive change. Clearly a

review is the route to go. I thank you for your consideration and indulgence.

1200

The Vice-Chair: Thank you. We have about two and a half minutes per caucus, starting with Mr Lalonde.

Mr Lalonde: On your first page you state, "I work an average 55 hours a week" —

Mr Veitch: No, I didn't say that I work an average 55 hours a week. It says that phone calls I get are from people —

Mr Lalonde: Yes. "On average, our labour council receives five calls a week." Your labour council that receives the average of five calls a week, are they from organized labour people?

Mr Veitch: No.

Mr Lalonde: They're not.

Mr Veitch: That's just my point. They have no protection other than the Employment Standards Act and, in fact, this government wants to change the very protections that are put in place for employees such as that. Unionized workplaces have collective agreements, so they have a little more strength to fight such injustices.

Mr Lalonde: Do you refer them to the Ministry of Labour?

Mr Veitch: I do, and I said so right there.

Mr Lalonde: Yes. I know they say they can't do it. I really feel — I don't know what your position is on this — but every employer must, not only should — it should be a necessity that the employers attend a workshop on employment standards so they would know what the consequence would be if they don't follow the employment standards. This way, having to work 55 hours a week and getting paid for only 30 hours a week, I really feel sorry for those people and probably, as you said, that's at the minimum salary.

Mr Veitch: Yes. On average, employment in Peterborough is equivalent to that in Newfoundland. We've got something like a 14% unemployment rate, which is just incredible. We've got an awful lot of mom and pop industries, we've got an awful lot of fast food places, and they either know what the legislation is or just don't care. This is part of the problem.

The Vice-Chair: Mr Christopherson.

Mr Christopherson: How much time is there?

The Vice-Chair: Two and a half minutes.

Mr Christopherson: Thank you very much, Tom, for an excellent presentation. I appreciate it. It's also worth noting, at least once, in every community that when you acknowledge thanking the committee to appear that, of course, we had to bring the government kicking and screaming into the public light because they didn't want to do it. The same as they rammed Bill 7 through and attempted to do with Bill 26, we had to drag them out here and force them to face the people.

I want to touch on two issues, if I can, but I may only get to one. I want to focus on what you put on your first page when you talk about what happens to somebody in basically a sweatshop where they're in a bad-boss situation, they're terrified of their job to file a claim. You've heard others at least refuse to refute this. In other communities I have had them say that's not the case, that in fact it's good to go to the six months because it stops

a guy from sitting around on his can mulling over whether he's going to make a complaint. That is the mindset of certainly some of the people supporting the government and must be the position of the government because they refuse to admit these vulnerable people are here. Can you still expand on that a little bit for me?

Mr Veitch: Okay. Well, the six-month thing, for instance, I've got two different things that I'm working on right now. We had a plant closure a few years ago that was part of my local, and that's Triplex-Lloyd. They waited a hell of a long time for the moneys that were owed to them. They were issued paycheques, nice as you like, but they all bounced. They had to wait a hell of a long while before they finally did get their money.

Another situation as well is, I've been working since 1992 with a group of older displaced workers trying to get them their POWA moneys. Now, that's been a hell of a headache because you've got the federal government, you've got the provincial government, and neither one of them wants to take responsibility. These poor people are at the point now that they're losing their houses. That's if they're still alive, because these people were 55 or older when they lost their jobs, and this is four years later. An awful lot of water goes under the bridge in that period of time. It's been a hard battle for them, and it's still ongoing. We still haven't received any benefit from it.

Mr Christopherson: If I can touch briefly on the idea of the flexible standards because unfortunately — well, it's good that we forced them to back off because they were going to make this law by the end of June. That would have been in there. So that's gone. We've achieved that much. But the minister has committed the fact that that's going to be part of the review, so you're right; it's coming back out of the cave.

We've heard in communities that this is the slippery slope —

The Vice-Chair: Mr Christopherson, excuse me, I'm sorry. Mr O'Toole.

Mr O'Toole: I'd just like to take some issue with Mr Christopherson's statement. We are here today. We are listening. We are the government and we are the ones who decided to hold these public meetings.

Mr Christopherson: After we forced you.

Mr O'Toole: That demonstrates that this government listens. In fact, we're listening across the province.

I just want to broaden this out by saying that you're aware that this is a two-phase process of reviewing the Employment Standards Act.

I want to focus in on the 14% unemployment in Peterborough. Can you tell me why the economy is so bad? Do you have a general feeling? We're trying to create jobs and opportunity and hope in Ontario, and after almost one year in office, the last employment statistics indicated that Ontario is indeed recovering. Do you think we're on the right track in any way or do you think we're on the wrong track entirely?

Mr Veitch: The fact of the matter is, you're talking about the creation of jobs, but at the same time you're also talking about the elimination of 27,000 OPSEU jobs. By the same token, the federal government is talking about the elimination of 45,000 public sector jobs. The

jobs that you create balance out the jobs that are lost, so I don't see where there's any gain.

Mr O'Toole: But we're taking the jobs off the back of the taxpayer. Technically, governments don't create work they create the opportunity and the environment for creating real jobs, a real economy.

I just want to recognize one of your comments. I would agree and say that a review of the entire act is in order. I hear you saying that, Tom.

Mr Veitch: The fact is, I think the act would stand up very well to review, because there's not enough language in it to give it teeth. But what is proposed is watering it down and taking away from any strength that the act currently holds.

Mr O'Toole: You see that there are 130,000 net new jobs in the last 12 months in Ontario. Would you agree in some part that, for all the criticism we may receive, we have declared to the world — indeed the Premier is in Europe now, trying to solicit business for Ontario. We have to be — we don't like the word "competitiveness." That isn't lowering any standards. This act doesn't lower any standards. That's clear in here, whether it's the minimum wage or — in fact the entitlement provision are very clear.

The Vice-Chair: Thank you very much for your presentation this morning.

PETERBOROUGH COMMUNITY LEGAL CENTRE

The Vice-Chair: I would ask that the representative from the Peterborough Community Legal Centre come forward, please. Good morning. I would ask you to introduce yourself to the committee this morning.

Ms Melinda Rees: My name is Melinda Rees. I'm the executive director of the Peterborough Community Legal Centre. I'm a practising lawyer. I've been practising in this area of law since 1987. I've been in Peterborough since 1991, and I'm grateful for the opportunity to make this presentation to you today.

The Peterborough Community Legal Centre is a community legal clinic serving the city of Peterborough and the county of Peterborough since 1989. Our practice as directed by our community board, has focused on social assistance, landlord and tenant and worker compensation law. We've had little involvement with employment standards except in the context of providing over-the-counter summary advice.

The rationale behind this prioritizing of our case work has been that the Ministry of Labour provides investigative and enforcement mechanisms to those of our clients with employment standards problems. Consequently, our board has taken the view that despite the many problems with the current Employment Standards Act and the Ministry of Labour's enforcement of it, our limited resources should be directed elsewhere. However, I'm here today because it's clear that the changes to the Employment Standards Act proposed in Bill 49 constitute a major threat to the people who make up our client base.

I would like to take a moment to put Bill 49 in a broader context.

Many of our clients are on social assistance. Last year they had their benefits cut by 21.6%. The legal centre, the Peterborough Social Planning Council and several other social agencies have been conducting a hunger survey in Peterborough. Although the survey is not yet complete, I can report to you at this time that hunger and the fear of hunger are prevalent among our clients on social assistance, particularly those with children, the elderly and the disabled.

1210

Employable people on social assistance who have not been able to find work will soon be forced to participate in workfare programs in order to obtain benefits. Those of our clients who are fortunate enough to have jobs are usually employed in minimum-wage positions. Recent changes to the welfare regulations and the Unemployment Insurance Act mean that if they quit their jobs, for example because their employer is in breach of the Employment Standards Act, they may not be able to obtain any income support at all.

As a result of the cut in benefits, the average rents in the Peterborough area are significantly higher than shelter allowances. Many of our clients find it hard to locate affordable housing. The local housing resource centre which used to help them in this task has just had its funding eliminated.

Last week the legal centre presented a brief to the standing committee on general government on proposed changes to landlord and tenant and rent control legislation. This legislation weakens procedural protections for tenants whose landlords wish to evict them while at the same time providing those same landlords with a financial incentive to evict by allowing uncontrolled rent increases to take place between tenancies.

As I said earlier, those of our clients who are fortunate enough to have jobs tend to work in low-wage, non-unionized settings. Advocates for both non-unionized and unionized workers have been saying for years that the Employment Standards Act is a weak law. There are too many exclusions and too many loopholes. Enforcement by the Ministry of Labour is painfully slow. Little is done to encourage employer compliance with the minimum standards set out in the legislation. Workers who file a complaint with the ministry often have great difficulty collecting money owed to them by employers. Payroll audits by the ministry are rare even when a complaint has been made. Reprisals are a real threat because ministry enforcement is so lax.

Bill 49 will make a bad situation that much worse for vulnerable employees like our clients. Low-income, non-unionized employees will have great difficulty in enforcing the act.

I intend to make my submissions to the impact of this bill on our client group.

First, limitation periods: Bill 49 forces non-unionized employees to choose between making a complaint to the employment standards branch of the Ministry of Labour or commencing a civil action in court.

Under the current act, employees have two years to make a complaint to the Ministry of Labour. Employees whose complaints are found to be valid are entitled to back pay for up to two years from the date the complaint

was filed. The two-year time limit for making a complaint assists employees who dare not make a complaint until they have found employment elsewhere.

Under Bill 49, non-unionized employees will have only six months to file a complaint and will be entitled to back pay for a period of only six months from the date the complaint was filed. The shortened limitation period will penalize vulnerable employees who are too dependent on their employer either to quit or to run the risk of being fired after making a complaint.

As I said earlier, employees who quit or are fired in these circumstances could face heavy penalties if they apply for unemployment insurance or general welfare assistance. Further, non-unionized employees often don't have easy access to information about workers' rights. It may be months before they find out that their employer has been exploiting them and that there is a remedy. Very often they face additional barriers in that they are not well educated. They may have very low literacy skills.

Employees who miss the six-month limitation period will have to take their employer to court in order to enforce the law. As legal aid is not available for employment law issues, low-income employees in this situation will be out of luck.

There is a very serious risk that the six-month limit on filing complaints and on entitlement to back pay for non-unionized employees will reduce the number of complaints coming forward to the ministry or the courts while at the same time encourage unscrupulous employers to violate the act, secure in the knowledge that the penalty for doing so has been substantially reduced.

Bill 49 forces a non-unionized employee to choose at the outset whether he or she intends to proceed with their complaint through the Employment Standards Act process or through the courts. Employees who file a complaint under the act will have only two weeks to decide whether to continue under the act or withdraw their complaint and pursue a civil remedy. Employees who initiate an action but then decide not to pursue their civil suit appear to have no right to reinstate a complaint under the act. An employee who brings a complaint under the act for severance and termination pay cannot also bring a wrongful dismissal action claiming pay in lieu of notice which exceeds the statutory maximum.

The effect of these amendments is that employees will be confused and intimidated by the entire process. They will have to have quick and affordable access to legal advice in order to enforce their rights. But as I've said already, they're unlikely to be able to get that unless they can pay for it, so once again the bill penalizes our clients, the low-wage, non-unionized workers.

There are no limits on the maximum amount an employee can recover under the current legislation. Bill 49 would limit the amount an employee can recover by making a complaint to the Ministry of Labour for under \$10,000. This cap does not apply to unionized workers. Once again the legislation penalizes the most vulnerable employees. Low-wage employees who have been subjected to the most flagrant abuses of the act may well be owed more than the proposed maximum in wages, vacation, severance and termination pay. Although these employees could sue for a higher amount, they will not

be able to get a legal aid certificate for this purpose and are unlikely to be able to afford the high cost of civil litigation. Legal clinics will not be able to help them because most clinics are already overwhelmed with social assistance, housing and workers' compensation cases.

The bill also allows the minister to set a minimum amount for a claim through regulation. Non-unionized employees will be denied the right to have their claims investigated or enforced by the ministry. Theoretically they could sue their employers in Small Claims Court, assuming they had the skills to conduct an action unrepresented. But the court system is already overburdened. Small claims of this nature could be resolved far more expeditiously and cheaply through the Employment Standards Act complaint process.

Further, the ministry has not specified what the minimum allowable claim amount will be. How will the minister determine the amount at which an employer may exploit an employee with impunity? Ministers in this government think nothing of spending thousands of dollars to go golfing, so a \$200 claim may well be the minimum to them. But \$200 is about one week's pay for a minimum wage worker. What steps will be taken to ensure that employers do not deliberately keep their violations under the minimum in any six-month period to escape any legal penalty at all?

Enforcement of the current legislation is a problem for employees particularly with respect to collections. The Bill 49 solution to this problem is to privatize the collection function of the ministry by allowing private collection agencies to collect debts owing to employees. These agencies will be able to charge a fee. In situations where the collection agency is not able to collect the full amount of the debt owing to employees, the regulations will allow the amount collected to be apportioned among the collection agency, the employee and the government. It's quite conceivable that under this system, a minimum wage earner who is owed money by an employer would receive not only less than she's owed but would have to pay a private collection agency to recover the debt as well.

Collection agencies will have the power to encourage settlements. They'll naturally want to push for a quick settlement and quick payment of their account. How will workers be protected from pressure to settle for unreasonably low offers?

Bill 49 is being presented as a housekeeping bill which makes the Employment Standards Act easier to administer, encouraging flexibility and self-reliance in the workplace. In fact, the bill makes major, substantive changes to Ontario labour law. It probably will make the Employment Standards Act easier to administer because the combined effect of the provisions of Bill 49 will have the effect of significantly reducing the number of complaints made by non-unionized employees.

Further, the responsibility for enforcing the act and the cost of enforcement will be shifted to employees. As for encouraging flexibility and self-reliance in the workplace, the bill actually provides incentives for non-compliance by employers. Employees, especially low-income employees, will find it difficult to protect themselves from infringements of what are, after all, only minimum

employment standards. They know that if they quit or are fired because they've complained, draconian changes to welfare and unemployment insurance legislation will likely result in severe hardship for them and their families.

Putting it all together, it's difficult to avoid the conclusion that the government is seeking to create a large pool of desperate people who will work at any price on any terms. The cost to employers and to all of us in the long term will be poisonous labour relations and social unrest. Why take us down this road?

Thank you for the opportunity to make this submission.
1220

Mr Christopherson: Thank you for an excellent presentation. I want to reiterate your closing comments, "Putting it all together, it's difficult to avoid the conclusion that the government is seeking to create a large pool of desperate people who will work at any price on any terms." I agree with you and I would challenge the government to defend that this is not what's happening.

The other thing, and it's come up in every single presentation that I think is crucial to these hearings, is to challenge the government to take on a community representative who fights for minimum wage workers when you make the claim, as other community legal clinics have, that the six-month limitation in effect denies vulnerable workers their rights because they're afraid to make the complaint. The government speaks next, and I challenge them to take you on when you make this case, because we've got to have it out on this one. This is taking away workers' rights and they refuse to admit it.

Mr Tascona: They call this the employee bill of rights. As you know, minimum standards have been improved for vacation pay and pregnancy leave, which you may want to consider as improvements. One thing you should be aware of is that the employment standards officers' enforcement powers have not been changed; they had been given the added responsibility of doing collections, which they never did before, until the NDP got rid of the collections squad in the Ministry of Labour and terminated 12 employees. In changing the format of collections, we're going to be giving them more time to do what they're supposed to do in terms of enforcement, because we haven't changed anything there.

As a legal representative you must provide advice to different workers, and that's probably the reason why you're around. Why would you object to doing something you're supposed to be doing in terms of offering legal advice?

The Vice-Chair: Thank you, Mr Tascona. Mr Lalonde?

Mr Lalonde: Just one question: Do you think this bill will help to create additional jobs?

Ms Rees: No.

Mr Lalonde: At the present time you say many of your clients are on social assistance. Did you at times represent employees for claims to the Ministry of Labour?

Ms Rees: Traditionally in our particular legal clinic we haven't because we have a lot of other work to do, and the Ministry of Labour has been there.

Just to address Mr Tascona's point, my understanding is that 45 ESOs are going to be laid off as a result of this legislation, so enforcement of the act, which has always been slow, is just going to get much slower, and collections have been farmed out, have been privatized. It's absolutely unconscionable that low-income workers should have to pay for collections, for a debt that's owed to them. It's unconscionable.

NORTHUMBERLAND COMMUNITY LEGAL CENTRE

The Vice-Chair: I ask the representative from the Northumberland Community Legal Centre to come forward, please. Good morning. Welcome to our hearing process. I would ask you to introduce yourself, please.

Ms Lois Cromarty: My name is Lois Cromarty. I'm the executive director of the Northumberland Community Legal Centre. We are a legal clinic that services Northumberland county, as my counterpart Melinda Rees does for Peterborough. I thank the committee for the opportunity to make this presentation this morning.

While we may agree that the Employment Standards Act needs some improvement, I don't think we would agree that the changes that are proposed in Bill 49 would achieve the ends that we want to see.

I started looking at the amendments in terms of the promotional material that was sent out by the government in advance that said the bill was based on the concepts of self-reliance and flexibility. I thought I would look at one of the changes, the minimum and maximum limits, in the light of that concept of self-reliance. It seems to me that the self-reliance issue is the government's attempt to save money because then the workers would be doing the work that was previously done by the Ministry of Labour staff. Would that really be a cost saving for the government?

In a perfect world obviously there would be no bad employers, and workers would not have to resort to the Employment Standards Act or any other act to get their rights enforced. But of course that's not the case. This is not the perfect world; this is the third rock from the sun and we are not a perfect system. We have to assume, then, that if we do have a self-reliant worker, what do the changes about minimum and maximum standards mean? You have to be self-reliant, you have to know the system and you have to know about the court system because that's your only other recourse. If you fall below the minimum level that's not yet determined by the government, or we don't know what it is, then you have to be able to go to court on your own to get your money. Similarly, if you go over the maximum and you don't want to waive the amount over the maximum, you have to go to court as well.

I say it's not a cost saving for the government because what the Ministry of Labour is going to save, Mr Harnick, the Attorney General, is going to have to pay. The court system is not functioning very well as it is right now, and I can't imagine how well it will function with the additional burden of having to deal with employment standards claims for wages in Small Claims Court or in General Division for more than \$10,000. I'm

probably going to be sued as a heretic by the law society for saying that, but the courts are not always the answer.

We have to look at what the costs are to the workers, because I don't think it is a cost saving to the government. Minimum limits are not yet prescribed by regulation and the maximums are set at \$10,000. If you want to have a claim for more than \$10,000, if you want to get the money that's owed to you for more than \$10,000, you have to start a General Division court application. I don't know if any of you have looked at the rules of court lately, but they're not small and it's not an easy process to get into; it's not an easy process to complete.

I heard one presenter earlier mention, "This act sort of levels the playing field." It doesn't. It's a cost saving to the employer-violator. If you have a claim that you owe wages to an employee, that employee is now boxed into a corner. Either they have to take you on in court, and because there are no legal aid certificates for court they're going to do that alone or they have to pay for it themselves, or they have to waive the excess over \$10,000, a bonus to the employer.

As for the minimum amounts, the government is really deciding that some workers' rights are less important than others'. Leaving small claims to Small Claims Court means that employers will go unpunished. It will become a cheap way of doing business. Why do we make those predictions? Because you have to be self-reliant to go to court. That means you have to be literate, you have to have the ability to draft the claim in the right way, you have to ask for the right things, you have to be able to present your case to the judge, you have to be able to cross-examine the employer, you have to be able to produce records and documents, and in the Small Claims Court system there is no way of discovery, "discovery" being the technical term for making the other side produce their documents so that you can see what their case is going to be.

I think it would be fair to say that most people are intimidated by the thoughts of going to court, whether or not they are represented, and chances are in Small Claims Court, and chances are in the General Division for claims over \$10,000, the workers will not be represented. Employers will most likely be represented by lawyers to defend those claims. The prospect of taking on the employer is a daunting one, and even more so if you are still employed by that employer at the time you want to sue them.

The current act is quite toothless in regard to providing a statutory right of reinstatement if you are fired, as a retaliatory firing, for trying to enforce your rights. The current act says that reinstatement is an order that only the prosecution can make if they prosecute an employer successfully under the current act or under the pregnancy and parental leave sections. Anything else, there's no retaliatory firing provision for reinstatement in an ordinary claim where you might be fired because you claim wages from them. That's where the current act is lacking. It needs more teeth. It needs a specific statutory right that says the employee can claim reinstatement either through the court system or through the Ministry of Labour if you are fired as a result of making a claim for wages.

1230

Illiteracy of workers has already been mentioned by a number of presenters this morning.

The other thing I was wondering about was, with the minimum limits — and as we say, we don't know what that is — will workers then be forced to stay in that low-paying, poor working condition in order to raise their claim up to get it to that magic limit for the ministry to prosecute or to process on their behalf? In short, the minimum and maximum limits will create subclasses of workers: those who have the financial wherewithal, the knowhow, the literacy, the lack of fear to be able to be self-reliant, which sounds like a motherhood and apple pie statement, and those who do not. It's that latter category that will be easy prey for unscrupulous employers.

What then is the benefit of having the ministry continue to process all claims? Two things: investigative powers and deterrence. As I said before, Small Claims Court doesn't have a discovery process. The ministry does have investigative powers, can go in, can do audits, can get the documents needed to help back a worker's claim for wages owed, not something that the average worker would have any concept of as far as the General Division court system would work.

As for deterrence, here again you'd have to have a pretty sophisticated litigant to ask for punitive damages in their Small Claims Court action. That's not something that's ordinarily bandied about as a phrase in ordinary conversation.

By having the ministry have a blind eye to all those claims below that minimum level, they won't know which ones are the crappy employers; they won't know who's out there nickel-and-dimeing their employees to death. We see all the time the employers who fire their workers just before that magic three-month mark, because then they don't have to have termination pay or severance pay. They can get rid of them with no notice. I'm quite certain that those same types of employers would be well aware of the minimum limit for the ministry to process a claim and would be quite willing to nickel-and-dime their employees up to that level. For the big-ticket violators, again, it's a saving to them. They're in the driver's seat because they know that for a claim of \$12,000, they can get away with \$10,000 max. It sounds like a plan to me.

We believe that there are changes needed to the act. They need to have more officers; they need to have broader powers to reinstate fired workers; they need better and faster enforcement mechanisms. Shorter prosecution times, shorter investigation times are all needed. The reason we say they need more staff is it's a little like speeding. If I know there are no police, no OPP between here and Cornwall, am I going to be tempted to drive a little more than 100 kilometres an hour? I think probably yes. If I know there are going to be police out there watching my every move, perhaps I'll be more likely to stick to the speed limit, the maximum prescribed.

None of the changes from Bill 49 will meet what we consider the requirements, that is, to give workers their proper due under the act. The Bill 49 amendments will force Ontario workers to pay too high a price for the privilege of having a job.

The Vice-Chair: Thank you very much. We have approximately a minute and a half per caucus, starting with Mr O'Toole.

Mr O'Toole: Thank you very much, Ms Cromarty; pleased to hear your presentation. Do you spend any time working with violations of employment standards, that kind of advice to people?

Ms Cromarty: We have represented people, yes.

Mr O'Toole: Have you any idea what a satisfactory minimum might be? The minister has clearly stated that at this time there isn't one. Have you any idea of what would be appropriate use of public expenditure? Like a \$50 claim, would it be worth spending \$1,000 to collect the \$50? Can you comment on that?

Ms Cromarty: I don't think there should be a minimum, for the reasons I've stated, because the way the amendments are worded now, you can join several claims together to make it up to the minimum limit, whatever that might be, but only if somebody else will join with you and only if they have the same problem.

Mr O'Toole: I just wanted to make clear that right now the act, as it's been drafted, is trying to recognize that 96% of the claims are under \$10,000, with the average claim being \$2,000, so we're spending an inordinate amount of public money in the pursuit of that 4%. That 4% over and above the \$10,000 should probably go through the full legal court system. It may involve middle managers or upper managers in the whole downsizing scheme. Do you think, in retrospect, that that's an appropriate use of public money to provide the greatest good for the greatest number for the least amount of money? That's really the thrust here: focusing on the most vulnerable.

Ms Cromarty: You said 96% of the claims are for under \$10,000. Obviously your resources are spent more on that than on the 4%, are they not?

Mr O'Toole: I think —

The Vice-Chair: Excuse me, Mr O'Toole. I'm sorry but we had a minute and a half. Mr Lalonde.

Mr Lalonde: You mentioned at the beginning that workers will have to do the work previously done by the Ministry of Labour. I fully agree with you on this knowing the capacity of resolving 75% of the cases that the government handled in the past. You said that you have represented people also in the past. What was the percentage of successful cases that you handled?

Ms Cromarty: It was 100%.

Mr Lalonde: Do you think that probably the government should have taken a hard look at making sure that employees were properly trained, and also having the facility of hiring a private collection agency, the commission to be paid by the employers instead of taking it off from the employees' dues?

Ms Cromarty: Certainly, if the employer can be made to pay the collection costs. But the way the bill reads, as I understand it, if that employer doesn't have enough money, the employee then loses out at least a portion of the wages that are owed to them, and I don't agree with that. In the court process, for instance, the collection is long and arduous task. You have to hold this whole judgement/debtor process to find out what money, what assets the debtor has so that you can collect your money.

Anything that puts money into the hands of the person who is owed it, the worker, as fast as possible and to 100% of what is owed to them, I would agree with.

Mr Christopherson: Thank you for your presentation. We in the NDP have found it a continuing insult to the people of Ontario to suggest that this is minor house-keeping, which is what the government tried to say it was, as you pointed out in the beginning.

The issue I want to focus on — we don't have a lot of time — is again the minimum threshold that you spoke of. We've got a government which says it's not taking away any rights, but right now there is no minimum threshold. Right? If you're owed money, you're entitled to have the ministry go after that money on your behalf and enforce your rights, which is its responsibility. The government is going to change the law so that the cabinet by regulation — not by legislation, by regulation — can impose a minimum; say, 200 bucks. Therefore, if you're in a non-union shop and you're ripped off for overtime pay and it amounts to 80 bucks, the government will not help you through the Ministry of Labour. Is that your understanding of it?

Ms Cromarty: That's my understanding.

Mr Christopherson: I would ask you how often you think that's likely to happen, that there'll be desperate situations where people will not have the government there to help them out, even if they knew that right was there. How often is that going to happen in the province of Ontario now, do you think, at least in your area?

Ms Cromarty: I would suspect that more often than not people are not going to be willing or able to prosecute their own employer for that under the minimum standard. I think it was quite telling from one of the earlier presentations from the business side where they said that this is a bill that will reduce the cost of doing business. I say that's an example of how you would reduce the cost of doing business.

Mr Christopherson: That's money that the employer keeps in their pocket. That 80 bucks is gone to the worker and it's in the employer's pocket and there's nothing the employee can do in terms of asking the ministry to help them enforce their rights.

Ms Cromarty: That's correct.

QUINTE LABOUR COUNCIL

The Vice-Chair: I would ask the representative from the Quinte Labour Council to come forward, please. Good afternoon. I'd ask you to please introduce yourself to the committee and the public.

Ms Barb Dolan: I'm Barb Dolan, chair of the political action committee of Quinte Labour Council and a member of the Communications, Energy and Paperworkers Union, CEP Local 30, Belleville. Actually, my oral brief will vary slightly from the written one before you due to the time constraints.

In introducing Bill 49 amendments, Minister Witmer claimed that she was making housekeeping amendments to the Employment Standards Act. She described Bill 49 as facilitating administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures. Sounds simple enough and sounds relatively harmless.

1240

The truth is, what was presented as minor technical amendments contains substantive changes, changes which clearly benefit employers and diminish access to justice for both organized and unorganized workers, particularly the most vulnerable in the workforce. These changes will make it easier for employers to cheat their employees and harder for workers to enforce their rights. It strips unionized workers of the historic floor of rights which they have had under Ontario law for decades — the very same floor of rights that has protected the unorganized — and these rights are being swept away by the minister as mere housekeeping changes.

Although the minister has chosen at this time to remove the section which would allow management to table bargaining demands which are below standards, I hope, when the committee is struck to review the Employment Standards Act, that consideration will be given to the submissions received on Bill 49. Because of this hope, I will speak briefly on this section.

This section contains a fundamental change to Ontario law by permitting the workplace parties to contract out important minimum standards. Prior to this section, it was illegal for a collective agreement to have any provisions below the minimum standards set out in the Employment Standards Act. This measure erases the historic concept of an overall minimum standard of workplace rights for unionized workers. Employers would be free, for example, to disregard this previous floor of rights and have the opportunity to attempt to trade off such provisions as overtime pay, public holidays, vacation pay and severance pay in exchange for increased hours of work. This section continues the Tory agenda to promote strife and unrest in the workplace.

Given the inequality of power between employers and employees, including many who are unionized, circumstances in which detrimental tradeoffs are agreed to, despite the measurement problems referred to, can easily be envisioned. One can see these changes laying the groundwork for employers to pit one employee against another — peer pressure in the workforce.

This proposed amendment would allow employers to put more issues on the bargaining table which were formerly part of the floor of legislated rights. It will make settlements more difficult, particularly in newly organized units and small service and retail workforces. It will also enable employers to roll back long-established, fundamental entitlements, and in fact can only be seen as an abuse of the workers in Ontario.

The potential of this amendment alone to erode people's standards of living should be enough to make the drafters rethink this amendment. This has occurred to a point. At Quinte Labour Council we are concerned about this section being part of the review and the fact that this was even considered in the first place, and therefore stand in opposition to it.

As a central labour body, we will continue to fight for maintaining and improving the lives of our members and to be a voice for those individuals without the means or opportunities to come here today, and to speak out against these unjust attacks on workers and on the citizens in our community. In a Mike Harris Ontario, this

voice and representation is needed more than ever before, especially when you see local chambers of commerce buying into this attack, viewing the changes of significant reduction of government participation and enforcement as "entirely supportable." When the Tory government and business views the lack of enforcement as entirely supportable, that should send alarm signals to all Ontarians.

Viewed another way, if the central goal of the industrial relations system has been to facilitate negotiated settlements, this amendment runs counter to such an end. It will make settlements more difficult. It will likely result in more acrimonious relations and industrial conflict. What were in the past minimum benefits protected by law will now become permissible subjects for bargaining, arbitration and labour disputes. Further, this will directly impact on the standard of living and working conditions of all Ontarians.

The shortsighted may see this rush to the bottom as helping employers to become competitive, but the more sane of us will question whether this makes for higher productivity, better workplace relations, increased consumer purchases or an improved quality of life in Canada's most industrial and populous province.

Currently under the ESA, unionized employees have access to the considerable investigative and enforcement powers of the Ministry of Labour. This inexpensive and relatively expeditious method of proceedings has proved useful, particularly in situations of workplace closures and with issues such as severance and termination pay.

The Bill 49 changes eliminate recourse by unionized employees to this avenue and instead require all unionized workers to use a grievance procedure under the collective agreement to enforce their legal rights. The union will bear the burden of investigation, enforcement and their accompanying costs.

Should these amendments pass, the collective agreement will have the Employment Standards Act virtually deemed to be included in it. A union will also face the potential of claims against it by dissatisfied members. Although the existing duty of fair representation has not in the past been seen as requiring a trade union to represent employees in respect to employment standards, with this amendment, a union can be faced with complaints concerning fair representation by members. This could well mean that a failure of enforcement will be seen by the Labour Relations Board as constituting a breach of the duty of fair representation. Thus, unions will face both additional obligations and additional liability costs.

Arbitrators will now have jurisdiction and make rulings that were formerly in the purview of the employment standards officer, a referee or an adjudicator. They will not be limited to the maximum or minimum amounts of the act. However, arbitrators lack the investigative capacity of the ESO and may not be able to match the consistency of result that the act has had under public enforcement.

With these amendments, the ministry is proposing to end any enforcement in situations where they consider violations may be resolved by other means, namely, the courts. The amendments would download responsibility

for the enforcement of minimum standards for non-unionized workers. Employees would be forced to choose between making a complaint to the employment standards branch or filing a civil suit.

Responsibility for enforcement is downloaded on to non-unionized employees by limiting the amount recoverable through employment standards to under \$10,000. Currently there is no limit to what is recoverable. What an employer owes an employee is generally what is paid.

An employee who files a claim at the Ministry of Labour for severance and termination is precluded from bringing a civil action concerning wrongful dismissal and claiming pay in lieu of notice which exceeds the statutory minimums. The effect of these amendments is that those employees who have chosen the more expeditious and cost-effective path of claiming through the ministry will have to forgo any attempt to obtain additional compensation through the courts. Legal proceedings are notoriously lengthy and expensive for many, even though they may be entitled in common law to more than the statutory minimum under the ESA.

An employee who seeks to obtain a remedy in excess of \$10,000 and who can afford to wait the several years a civil case will take, and at the same time pay for a lawyer, will have to forgo the relatively more efficient statutory machinery in respect for even those amounts clearly within the purview of the ESO.

Employees who file a complaint under the act will have only two weeks to decide whether to continue under the act or withdraw their complaint and pursue a civil remedy. Those unaware of their legal rights may well be excluded from commencing a civil action unless they obtain the necessary legal advice within the short two-week period. Given the unprecedented attacks on workers in this new Tory Ontario, and the rabidness of this attack, there are those who are unaware of what their rights are and what their options are. The Screaming Tales of Quinte and Northumberland are examples of workers' vulnerability and the employers' abuse.

There are also minor provisions precluding an employee who starts a civil action for wrongful dismissal from claiming severance or termination payments under the act. Other provisions are also prohibited under the act once a civil action has started, such as an employer not paying wages owed or failure to comply with the successor rights in the contract service sector. Employees who initiate a claim but decide they no longer wish to pursue their civil suit don't even appear to have that two week time limit to change their mind. Rather, they appear to have no right to reinstitute a complaint under the act.

It is interesting, the Employment Standards Act is defined as an act that contains the basic rules about working in Ontario. Both employers and employees have rights and responsibilities under this law, and the basic points about this law apply to most employees. Yet, with the proposed amendments, we see that workers have fewer rights under this new act, thereby defying the original purpose of the Employment Standards Act.

The amendments introduce a new statutory maximum amount that an employee may recover by filing a complaint under the act. This maximum of \$10,000 would appear to apply to amounts owing of back wages an

other moneys such as vacation, severance, and termination pay. There are only a few exceptions such as for orders awarding wages in respect of violations of pregnancy and parental leave provisions and unlawful reprisals under the act.

The problem with making such a cap is that quite often workers are owed more than \$10,000, even in the most poorly paid sectors of the workforce such as foodservices, garment workers and domestics. Workers who have been deprived of wages for a lengthy period of time are the very employees who will not have the means to hire a lawyer and wait the several years it will take before their cases are settled. In effect, this provision will encourage the worst employers to violate the most basic standards while at the same time compounding the problems for those workers with meagre resources.

Bill 49 gives the minister the right to set out a minimum amount for a claim through regulation, and we know regulations are set with no public input. Workers who make a claim below the minimum — which is not yet known — will be denied the right to file a complaint or have an investigation. Dependent upon the amount of this minimum, it could well have the effect of employers keeping their violations under the minimum in any six-month period and thereby avoiding legal penalty.

1250

The proposed amendments intend to privatize the collection function of the Ministry of Labour's employment practices branch. This is an important change, providing one of the first looks at the government's actual privatization of a task that has traditionally been public. Private operators will, should these proposals be implemented, have the power to collect amounts owing under the act.

A fundamental problem with regard to the act has for some time now been the failure to enforce standards. This is no less true with regard to collections. The most frequent reason for the ministry's failure to collect wages assessed against employers is the employer's refusal to pay. The answer to this problem, according to this government and to the proposed amendments, is not to start enforcing the act, but rather absolve the government of the responsibility to enforce the act by farming out the problem to a collection agency. What is actually gained by this amendment is the implementation of the Tories' agenda in eliminating 45 enforcement jobs from the Ministry of Labour.

In addition, the employment standards director can authorize the private collector to charge a fee from persons who owe money. Should the amount of money collected be less than the amount owing to the employee or employees, the regulations will enable the apportioning of the amount among the collector, the employee or employees and the government. We want the system of public enforcement to be maintained and improved.

This provision will likely lead to employees receiving considerably smaller settlements. As well, they open the door for unconscionable abuse. Quinte Labour Council is gravely concerned that employees, particularly the most vulnerable, will be pressured to agree to settlements of less than the full amount owing as collectors argue, if only for reasons of expediency, that less is better than

nothing. This is a very real possibility when the collection may be for lost wages, given the economic conditions in Ontario that are such that an argument of "less is better than nothing" or "something now is better than waiting for an unknown amount in the future" is very real. Having at the same time to pay the collector amounts to nothing less than legalized theft. At the same time, unscrupulous employers will now find their assessments for violations lowered and thus be encouraged to continue their violations of minimum standards.

The proposed amendments of Bill 49 significantly change a number of time periods in the act. The major change is that employees will be entitled to back pay for a period of only six months from the date the complaint was filed instead of the existing two-year period.

Workers who fail to file within this new time limit will have to take their employer to court in order to seek redress. The burden of this cost will be borne by the employee, as the Ontario legal aid plan has been scaled back and no longer covers most employment-related cases. And if by some chance the worker's claim is handled by legal aid, given the cuts to their funding, their resources as well as the attacks on the vulnerable in our community — not only do they have limited resources, but they have limited personnel and time.

In contrast, the ministry still has two years from the day the complaint is filed in order to conduct their investigation and a further two years to get the employer to pay monies owing. In other words, an employee, having made a complaint under the act, could wait up to four years before receiving money that is justly owed to them; then only the part of that the collector collects minus the user fees. That the Tory government can rationalize such amendments as facilitating administration and streamlining procedures is beyond comprehension. A government that promotes an atmosphere of employment where employees are denied their rightful and just earnings goes well beyond the definition of responsible government and common sense. As one local Tory MPP calls it, this is protecting society's most vulnerable workers?

Our comments on the key amendments of Bill 49 indicate that no one concerned with maintaining basic societal standards for all citizens in our province can possibly favour these amendments. As for the unorganized, particularly the most vulnerable in our workforce, Bill 49 is about a race to the bottom. It is about undermining their already precarious existence and as such it is totally unacceptable.

As noted in the introduction, these amendments come on the eve of a comprehensive review of the act. The proper procedure would have been to include such changes as part of the review and not try to pass them off as mere housekeeping changes. But beyond this, the core of the problem is the nature of these amendments themselves. As our comments indicate, standards should not be eroded, standards should not be made negotiable, rights should not be made more difficult to obtain and enforcement of rights and standards should not be contracted out and privatized.

All of this is taking place as part of the overall Harris agenda to shrink the size of government and divest itself of public services. The bottom line means slashing \$10

billion from Ontario's budget in order to pay for a tax break for the wealthy.

I would like to thank this committee and those who listened.

The Vice-Chair: Thank you very much. As a matter of fact, that expired the time plus a bit, but thank you very much for your presentation.

B.W. DESJARDINS BOOKS

The Vice-Chair: I would ask that the representative from B.W. Desjardins Books come forward please. Good afternoon, sir. I would ask that you introduce your self to the committee for the sake of Hansard.

Mr Craig Desjardins: Certainly. My name is Craig Desjardins. I am the manager of a family business in Trenton, Ontario.

Madam Chairperson and members of the committee, thank you for the opportunity to address you today. The challenging economic climate in Ontario over the past few years has required all organizations that wish to survive to become more efficient and proactive in providing services to their customers. This is a lesson that government must learn.

In keeping with this sentiment of cost-effectiveness and value for money, I would like to comment on some of the positive changes to the Employment Standards Act that are being proposed. While I appreciate that in a social democracy we must provide a safety net for vulnerable employees and workers, we cannot afford two safety nets. The end to expensive and wasteful duplication of an Employment Standards Act investigation and concurrent civil litigation will go a long way to take the money away from lawyers and bureaucrats and get it to the victims of wrongdoing. By empowering the courts and employment standards officers with clear jurisdiction and authority, faster and more judicious decisions can be reached.

The Ministry of Labour's core competence is setting, communicating and enforcing the labour law, not the collection of judgments. Currently, two thirds of the orders to pay are not collected. This means hardship on the victims and wasted government resources. The revision that would see private collection agencies collect orders to pay is a step in the right direction. As a businessman who has had to put accounts to collection agencies, I know that these companies are effective.

In more general terms of the changes to the Employment Standards Act, I would like to comment to the committee on the macro changes in the labour market. Today we face some of the most massive structural changes to the employment market since the Industrial Revolution. While there is no substitute for skilled, proficient labour, labour is a smaller part of the total cost of manufactured goods and services as capital investment in technology continues.

Rapid technological advancement in communications, transportation, information science and mechanization requires that any government legislation that relates to employment be responsive and flexible to avoid hardship, but also to take advantage of opportunity. Issues like shortened workweeks and at-home working should be

settled between labour and business with the positive participation of government. Employers should not be punished by the Employment Standards Act for changes in the global labour market that are beyond our control.

We are living in a period of great change. We can hide our heads in the sand and hope that things will get better or we can become leaders in the world and face change creatively and head-on. Thank you very much.

The Vice-Chair: Thank you very much. We have about 13 minutes left, starting with the Liberal caucus.

Mr Lalonde: I have just one question. The fact that employers and employees will be able to negotiate workweek hours, do you think this could have an effect on the quality of family life?

Mr Desjardins: I think, sir, it certainly has a very great impact. While I personally was very much in favour of a longer workweek because as a businessperson I am required to do that to make my business survive, I think we're seeing examples in Europe where corporations like Volkswagen are moving to a four-day workweek. I would certainly like to see some of the results of how longer time with family improves the quality of life.

Mr Lalonde: Improves?

Mr Desjardins: Certainly, sir, yes. More time with family, more time for relaxation and leisure, I assume that would have some positive impact on family life.

Mr Lalonde: I've learned just the opposite, because in the past —

Mr Desjardins: I don't know what kind of family you have then, sir.

Mr Lalonde: — ever since we have allowed the stores to be open on Sunday, the quality of life has been affected tremendously.

Mr Desjardins: Again, sir, that's your opinion. I would think going past some of the stores this past weekend, people seem very keen. I went into A&P and the place was busier than a Friday.

Mr Lalonde: Definitely.

Mr Desjardins: People seem every happy to have an opportunity to shop and spend their money when they have the time available.

Mr Lalonde: But if you were to ask those people who are doing the shopping if they would work on a Sunday, they would say no.

Mr Desjardins: If we're talking about a standard workweek, we have laws and the Employment Standards Act specifies limitation under the hourly work. That's spelled out in the act. If you do work on a Sunday, you don't work on another day.

Mr Lalonde: It's been proven in the past the more hours you work in the week, the more accidents will happen, will occur, and also more sick leave will be taken by employees.

Mr Desjardins: Well, sir, I'm not advocating a longer workweek. I said I work a longer workweek as an independent businessperson because if I don't my business will fail. I'm saying a possible solution may be a shorter workweek and presumably if you work less, you have fewer accidents.

Mr Christopherson: Thank you for your presentation. I'm assuming — and I'd ask you to correct me if I'm wrong — that obviously you're not the type of person

who would appear before a committee like this if you didn't feel pretty clear you knew what you were talking about.

Mr Desjardins: I have an opinion. I don't like to have any dealings with government when I don't have to because I have a business to run.

1300

Mr Christopherson: I want to ask you directly and as straightforwardly as I could whether you believe there's anything at all in Bill 49 that takes away any rights that workers now have.

Mr Desjardins: No.

Mr Christopherson: Fair enough. I would like to just kind of push that a little bit then. Could you explain to me how, if I now have the right, as an employee, to have the ministry fight to get \$80 that I'm owed but because there's a new minimum threshold, I don't cross that threshold, and I either have to go to court myself and take time off work or hire a lawyer, which is going to cost me money to get my 80 bucks, how I haven't lost something?

Mr Desjardins: What I would suggest was that you didn't lose rights; you gained responsibilities.

Mr Christopherson: No, I've lost —

Mr Desjardins: It's your responsibility as an employee. It's part of a two-edged sword. You have rights and responsibilities as an employer and as an employee.

Mr Christopherson: But the law right now provides that the ministry will go after that 80 bucks that's owed me. That's a right that I have under the current law. When Bill 49 is passed, it'll be gone.

Mr Desjardins: My interpretation of the bill would suggest that by eliminating things like collection, we're going to allow the people in employment standards to act as arbitrators.

Mr Christopherson: No, no. But deal specific —

Mr Desjardins: If we can avoid going to Small Claims Court and going to civil litigation, the problem can be solved simply and easily. You seem to characterize all businesses as evil and cruel. Ontario has some of the most progressive and most advanced employers in the world.

Mr Christopherson: Absolutely, and we have our share of Screaming Tales too and that's what the minimum standards are there to provide.

Mr Desjardins: I believe that's been —

Mr Christopherson: I'm asking you how you can defend a government line that every person who deals with says is not the case at all, that there are no rights being taken away. I just can't understand how you can allow, as a young professional, for the Hansard of all of history to reflect that this was the position you took at this time, for whatever reason I don't know — but for you to suggest that somehow there aren't rights being taken away is just beyond my understanding.

Mr Desjardins: Excuse me, Madam Chairperson, was there a question there?

The Vice-Chair: Mr Christopherson, if you have a question, go ahead and maybe —

Mr Desjardins: It's not grandstanding. I believe I'm here to present, not the member.

The Vice-Chair: That's a fact but there also is a question-answer period and I would ask you, Mr Christopherson, if you do have a question.

Mr Desjardins: If the question is, am I presenting this opinion? Yes.

Mr Christopherson: Your opinion is noted.

The Vice-Chair: Finished?

Mr Christopherson: Oh, yeah.

Mr O'Toole: Thank you for appearing as an entrepreneur this morning. I think you're the first one. You are an employer, I gather.

Mr Desjardins: Yes, we are.

Mr O'Toole: You have employees?

Mr Desjardins: Yes.

Mr O'Toole: Do you consider yourself a bad boss?

Mr Desjardins: No. I'm a very generous boss.

Mr O'Toole: That's clear as to the records. Is anyone paying you to be here today?

Mr Desjardins: Absolutely no.

Mr O'Toole: Are you paying anyone to operate your business?

Mr Desjardins: Yes.

Mr O'Toole: Do you work long hours?

Mr Desjardins: Yes.

Mr O'Toole: Do you have any coverage under the Employment Standards Act?

Mr Desjardins: No.

Mr O'Toole: Are you self-reliant?

Mr Desjardins: Yes.

Mr O'Toole: Do you think that's the way for Ontario and each individual to go?

Mr Desjardins: I certainly think for the majority —

Mr O'Toole: Do you think this act helps that or facilitates that or awakens people, able-bodied citizens to —

Mr Desjardins: As I said in my outline, my statement, there are vulnerable employees and workers. They are protected, I believe.

Mr O'Toole: You don't have a union in your workplace?

Mr Desjardins: No, I do not.

Mr O'Toole: Do you treat your employees fairly?

Mr Desjardins: I treat my employees like family.

Mr O'Toole: Good. Do you negotiate with them, like who might work a Saturday and who might — do you think some employees are more interested in time off in lieu of overtime?

Mr Desjardins: That's a possibility, yes.

Mr O'Toole: So there is flexibility in the new work arrangement of the new world order. Do you agree?

Mr Desjardins: That's right. I think businesses need that flexibility in order to meet the changes.

Mr O'Toole: I'm pleased to see a young person like yourself taking the time out of your business to make a comment, and I respect that. Are there any other pieces of advice you could give this hearing today and the people in the audience? Do you think that new business people, from that point of view — what kinds of things should be in the employment standards? You've heard a lot of people saying about the Screaming Tales and all these various things.

Mr Desjardins: What I would suggest is — it was mentioned earlier about posting the Employment Standards Act in the place of business. I would suggest that you write it in plain English so people can understand the damned thing.

As a chairman of a public board, we had an incident where we had to deal with the Employment Standards Act. I had a mutiny on my board because they all wanted to resign because they couldn't understand the act. We had to seek legal counsel — again, we consider everybody who is part of that organization as part of the family. It wasn't a matter of any complexity, but there was just confusion as to what the bill meant.

Mr O'Toole: We've heard others say that. Thank you very much. I've really enjoyed your presentation.

The Vice-Chair: We still have approximately a minute and a half left if somebody would like to use it.

Mr Tascona: Have you ever dealt with the employment standards branch in this community?

Mr Desjardins: No, fortunately.

Mr Tascona: In terms of the process, do you understand how the act works?

Mr Desjardins: Yes, in broad terms.

Mr Tascona: What would you think about transmission by an employer for an order to pay to be done by fax or electronic —

Mr Desjardins: That would just seem like a logical extension of the improvements in telecommunication that we have now. This isn't the age of the pony express; this is the age of modern technology.

Mr Tascona: Have you ever heard any comments about the collection, the powers of the employment standards branch?

Mr Desjardins: I'm not privy to specifics, no.

Mr Tascona: With respect to bankruptcy, have you ever had any experience with bankruptcy?

Mr Desjardins: Fortunately, no.

Mr Tascona: But do you understand how the Bankruptcy Act works?

Mr Desjardins: Yes.

Mr Tascona: One of our problems is the insolvency of employers. Essentially 50% of the claims aren't collected because of employers going bankrupt. Do you think there should be changes to the Bankruptcy Act which are handled by the federal Liberals?

Mr Desjardins: I think that's probably in order, yes.

The Vice-Chair: We're within 15 seconds of closure, so I will take the liberty to do so. Thank you very much for attending our hearings this afternoon.

We will recess now until starting time at 2:15.

The committee recessed from 1307 to 1416.

The Vice-Chair: Good afternoon. I would like to reopen the hearings on Bill 49, the Employment Standards Improvement Act. Welcome, everybody present. Just as a reminder of the format, our presentation period is 15 minutes per delegation. Included in that 15 minutes will be a question-and-answer period if there's time at the end, which will be divided evenly between the parties. This afternoon the starting of questioning, just so we know in advance, is by Mr Christopherson.

OPSEU KINGSTON AREA COUNCIL

The Vice-Chair: We welcome you to our hearings, sir, if you'd like to introduce yourself.

Mr Gavin Anderson: Good afternoon. My name is Gavin Anderson. I appear before you as chair of the Kingston area council of the Ontario Public Service Employees Union and as the president of OPSEU Local 444 in Kingston. OPSEU represents close to 4,000 Ontario public service, community college and broader public sector workers in the city and vicinity of Kingston.

I begin by thanking the government for acceding to the demands of the NDP and agreeing to hearings on the proposed revisions to Bill 49.

Excuse me, could I have your attention, please? Thank you.

Mr Rollins: I've heard it before, but I'll listen to it again.

Mr Anderson: When did you hear me speak before?

The Vice-Chair: Excuse me. If you'd just like to continue, please.

Mr Anderson: Okay. I'm sorry. They were talking over me.

The Vice-Chair: I agree with you that it is best that everybody pay attention to the presentations, and I would ask you to proceed.

Mr Anderson: I begin again by thanking the government for acceding to the demands of the NDP and agreeing to hearings on the proposed revisions to Bill 49. OPSEU and the rest of the labour movement were extremely distressed that no hearings were held in regard to Bill 7 and the amendments to the Labour Relations Act. I hope and trust that these proceedings have been scheduled because the government has come to realize that consultation is the cornerstone of all working democracies, even those informed by common sense. Of course, at the point when consultation is offered before amendments and new laws are proposed, we will be on to something even beyond common sense, something akin to good judgement.

My comments regarding the proposed revisions to the Employment Standards Act as they pertain to labour in general will be very succinct. I simply refer you to the briefs presented by the Ontario Federation of Labour and the large unions in the province as well as the presentations that have been made before you earlier today. I will not use any more of my 15 minutes to repeat or elaborate on the very cogent arguments contained therein.

In respect to my own position as a local union president at a children's mental health agency in Kingston, I will be only slightly more expansive. My employer relies on a Ministry of Community and Social Services transfer payment for almost 100% of their budget. Cuts to this funding place enormous pressure on the employer to extract concessions from my local's members. The proposed changes to the ESA will further damage already strained labour relations by encouraging and enabling the employer to table further takeaways. The effect will be more conflict and hostility at an already tense bargaining table. For the government to posit that the opportunity to cede rights represents flexibility is patronizing and disingenuous.

It is in my capacity as a family therapist in Kingston that I wish to proceed with the heart of my text. I serve as the chairperson of my union's area council, and I am a local president, but these are voluntary, spare-time positions. My real connection to work and to my community comes through my job. I spend many hours every day, every week with families. I meet with these families because they include a child or children struggling with an emotional or behavioural problem and they have been referred to my agency for help. The conversations I have are about change and growth. I speak with parents and their children about making life better, about solving problems, about discovering or becoming reacquainted with competencies thought non-existent or forever lost. What all this talk comes down to again and again is the ability to love and to work.

I will leave the talk of family love for another day, but work is well within the purview of this standing committee and Bill 49. Essential to the emotional and physical health of any family is meaningful work and gainful employment. The value of work goes way beyond the immediate benefits of contributing to economic security and prosperity. Work is a central tenet of the human condition, and the consequences of not working are devastating to individuals and families. Yet this government, through initiatives such as Bill 49, undermines and attacks the humanity of work.

Turning the labour market into a free market through the lowering of employment standards and other forms of deregulation in order to compete successfully against the Third World and other unregulated constituencies within the global economy does not advance our civilization, especially when we measure the progress of our civilization through the voices of its victims, as I do every day of my working life. The social and economic Darwinism of this government generates casualties and cheapens our civilization. In all previous human history, competitiveness has meant heightened standards for achievement, not lowered expectations.

I submit to you, particularly to those of you on the government side who purport to uphold a commitment to family values, that Bill 49 is yet another assault on ordinary working people and their families, particularly the working poor. Promoting temporary, part-time, unprotected McJobs at the expense of real careers by diminishing the influence of trade unions and the role of government in the economy will not result in anything but a widening gap between those who have and those who do not.

The inevitable result of such descents into laissez-faire economic morality has always been social upheaval. We can read in the newspapers every day about civil unrest and revolution in Latin America and South America as our hemispheric partners struggle to catch up with our standards. Yet our provincial government acts to weaken and diminish those same standards so coveted by our southern neighbours. I am not being melodramatic when I report to you that I am beginning to see in the eyes of my clients and to hear in their voices a desperation that suggests an abandonment of hope and an eroding of confidence in our society's resolve, as embodied in governments at all levels, to maintain and enhance social justice.

Will you not reconsider this act and start fresh from the premise that work is not a free market commodity made of interchangeable units of labour? Work has human as well as economic value and must be governed by rules and standards that are bonded to something far higher than the bottom line.

Mr Christopherson: Thank you, Gavin, for your presentation. I want to deal with one issue that's related to this. It's come up time and time again. You felt it necessary to discuss it earlier, and the response troubled me. I've been hearing the government talk about the fact that a lot of the presentations are the same, because there are different locals of different unions, there are different labour councils; I would argue there are different chambers of commerce, but they have the same message also.

I think it's important that you be heard, from the Kingston area council of OPSEU, whether it's exactly the same message or not, because I want to know what you think. If it's the same as someone else, fine; if it's different, fine. I'd like to know whether you agree that your council from Kingston deserves to be heard and how you would feel about the idea that just because you may make the same points as others you don't have some right to be heard. How do you feel about that?

Mr Anderson: I feel insulted somehow. We're allotted 15 minutes to be read into the record. To have people dismissing that and talking over us because they've heard it before quite frankly is rude, to begin with, and disrespectful. Our area council and our members and leadership in Kingston have a right to be read into the record, and the second half of my presentation was very personal and I don't think that Mr Rollins or his colleagues have heard that particular message before. I would put it to him that there are hundreds of individual, personal messages that support the ideals I'm talking about coming out of Kingston and I'm not given the opportunity to read mine into the record.

Mr Christopherson: Fair enough. Hoping that we've now dealt with that head-on, we won't have to hear from that sort of argument again, but if we do it'll be taken on again.

I want to ask you about your concern about the future for our young people, about the abandonment of hope, as you put it, and the eroding confidence in our society's resolve to maintain and enhance social justice. Many of us were talking about that outside after the demonstration, about what all of this means. Bill 49 is a part of the whole Tory agenda in terms of hope for our children, not the privileged children of those who have, but for the vast majority of kids who are from working-class families. Can you just expand a bit on that for me?

Mr Anderson: Children need something to believe in. I think that work has been a valuable institution, and through deregulation we are dismantling work as something to be proud of, something to strive for. When children lose those ideals, they do lose hope.

The Vice-Chair: Thank you, sir. I'm sorry to interrupt you, but in fairness to everybody here — we all know the rules; we're a three-party committee that set the rules — and so that everybody in the audience understands as well, at the end of the question period the time remaining will be divided equally. I'm going to have to make sure

that we allow all presenters today to get into the schedule. If you don't mind, when we talk at the end of dividing the time evenly, I will do that and then I'll have to cut off in the middle if we can't keep within in. I'm sorry about that.

Over to the government side, Mr Rollins.

Mr Rollins: Just an apology for when I wasn't paying attention. I expressed my concerns. I'm sorry that I wasn't paying attention. You were right in bringing that to my attention. Thank you.

Mr Anderson: Thank you, Mr Rollins.

Mr O'Toole: Thank you, Gavin, for a sincere presentation. It was different in the fact that you put a personal spin on it. On the broader scene, you as a member of OPSEU management are aware of the challenge of downsizing that we all face today. You and your leadership group are faced with the same dilemma, as I read in the paper every day of the week. Like OPSEU this government is sympathetic to that challenge, and I mean that sincerely. If you understand, there are two sides to it: the revenue and the expenditure side; whether it's the union-management group or it's the economy in general, it's the challenge we all face today in our society.

On page 2 you say, "The social and economic Darwinism of this government generates casualties and cheapens our civilization." Fear motivates, and did motivate the Luddites in the time of the Industrial Revolution, those people who did not have faith in mankind and the future, who lost hope, who clung to the past.

I put to you a question: As the world of work is changing, do you think we should resist change at all cost or should we become aware of the changing climate of work itself? You refer to the philosophical Darwinism kind of theory. That is the very edge of this discussion. The world of work is changing, not because of Mike Harris and this government; the world of work is changing —

Mr Anderson: I understand the question. I'm afraid I'll lose my opportunity to answer.

Mr O'Toole: Good. Thank you.

Mr Anderson: The question you raise concerns the role of government. Clearly there are changing economic conditions, and the question is —

Mr O'Toole: The federal or the provincial?

Mr Anderson: The question is, who manages, influences and controls this change? I believe that the government has a role, particularly when it comes to labour, because labour is not —

Mr O'Toole: OPSEU is powerless. Is that what you're saying to me?

Mr Anderson: No, I'm not.

Interruption.

Mr O'Toole: I'm just trying to get a balance.

Mr Anderson: I'm saying that OPSEU believes in government.

The Chair: Excuse me. We'll give you the time in a second. Just so that everybody is aware: People in the audience, please allow the conversation to go on between the presenter and the person asking the question. I understand your feelings, but the discussion right now is between those two parties. Continue, sir.

1430

Mr Anderson: OPSEU, quite clearly, believes in a different role for government than the present governing party. We don't believe economic conditions should be in the hands of the people who control the money, and that's what's happening now. More and more, we have governments at all levels, federal and provincial, that are bowing down to a global free market economy.

Mr Lalonde: Thank you, Mr Anderson. Do you feel that there was a need to come up with changes in the Employment Standards Act?

Mr Anderson: The changes that our members would have liked to have seen come through the lines of enforcement. I think the law on the books now is a weak law in the sense that there is no way of enforcing compliance. I've read many pieces of analysis and commentary that suggest that fully a third of employers were not complying fully with the Employment Standards Act. One way to do that is to say: "How are we going to force compliance? Through workplace inspections or increasing penalties, providing a disincentive for employers to cheat."

The way that this government appears to have resolved, or attempted to resolve, the problem of non-compliance is to lower the bar, to lower the standard, so that fewer competitors will not have to feel that to be competitive with their complying competitors — in other words, the competition that was set up here was that businesses that complied were at a disadvantage with businesses that were not complying with impunity.

To circle back to your question, the changes were not so much to do with the substance of the act as it stands now, but to revisit the whole idea of compliance and penalties and inspection so that workers were really protected by the act. These new revisions, no matter what it says in this new act — I notice that there are tiny little bits of improvement, perhaps in the area of maternity leave or vacations — but without some enforcement mechanism, that will not make any difference for people who are working in jobs and in fear of being dismissed if they raise any complaint at all.

The Vice-Chair: Thank you very much for making a presentation today.

DOUG WHITLEY

The Vice-Chair: I ask that Doug Whitley come forward, please. Good afternoon, sir.

Mr Doug Whitley: I would like to welcome you to Quinte country. I trust your stay will be enjoyable. You've come to leave your last visit to God's country down here.

My name is Doug Whitley and I come to you wearing two hats today: firstly, as co-chairman of the Trenval Development Corp, a federally funded job creation organization funded by Industry Canada. We endeavour to create new jobs, keep the ones we have, and to help industry and commerce with any type of problem they might have. In addition, we have a business development bank which is really a mini-bank of last resort. We lend up to \$75,000 for new business startups or to assist existing businesses to expand or buy equipment. We try

to help them with their existing banking facilities first. When that fails, we make every effort to make the loans. Our criteria for loans are not as strict as in the regular banking community. We can take security that others will not. Our board members, including myself, are all volunteers. We have a paid staff of three people, including a chartered accountant.

The other hat is as a general insurance broker who has 45 people working in seven offices. The business was started cold in September 1949. I might add — it's been brought up here earlier today concerning the new automobile insurance act that's been implemented by the government — that a number of my companies have filed to have rate reductions, and one of them has filed for an 11% reduction in the automobile rates they're charging at the present time.

I have read the documentation over and over regarding the hearing on Bill 49. From the perspective of Trenval and my own business, it appears to be fair and reasonable and should be implemented. Since we are continually visiting industry and commerce in our Trenval activities, we hear their concerns. I urge the committee to heed the paragraph on page 2, which reads as follows and speaks directly to what they continue to tell us, and this is what it is as I paraphrase it: We also need to eliminate unnecessary regulation. The Carr-Gordon report to the government's red tape commission recently concluded that many employers, especially small and medium-sized businesses, see Ministry of Labour laws and regulations as obstacles to growth and job creation.

The Trenval board of directors applaud most of the proposed changes that will simplify the administration of the Employment Standards Act. However, we do have the following concerns:

The proposed introduction of commercial collection services will impose additional costs to businesses. It is imperative that there be no cost to employers if they make settlement within a specified period.

The appeal process for both employees and employers must be seen to be fair. A final appeal board, including members from labour, business and government, or, alternatively, an ombudsman, is recommended.

Consideration must be given to sanctions for repeated spurious claims.

Our main criticism of what is proposed to date is the downloading of costs to employers without any apparent reduction of ministry staff and associated savings to provincial budgets. It is clear to me that the committee should work diligently to implement Bill 49. In this way, the employers, in cooperation with the people who work with them, can compete in the global marketplace.

Mr O'Toole: Thank you very much for your presentation. I just want to stray for a moment and comment on the amendments to the Insurance Act. You were saying quite favourably that some of the companies you represent in your business are persuading you to pass on 11% savings to the customer. Is that right?

Mr Whitley: What's happened is that almost all of the companies in my office, and I represent 35 companies, have asked the government regulation committee for reductions. As you know, they have to apply to the insurance commission to either make an increase or make

a reduction, and most of my companies have applied for anywhere from 3%. The top one was for an 11% reduction in the new automobile rates to commence on November 1.

Mr O'Toole: That's an important concern for constituents, I'm sure, in my riding and certainly here in Quinte.

I also want to pick up on your note on the Carr-Gordon report, the very serious concern for small and medium-sized business. For the whole Ministry of Labour's effort of paperwork and bureaucracy and jumping through the hoops, do you think this bill and the proposed phase 2 of the Employment Standards Act and its consultation process are the right way to bring the labour legislation in this province up to date?

Mr Whitley: Yes, I do.

Mr O'Toole: Do you have anything specifically, and I mean as a small entrepreneur, that you can say is really a step in the right direction? The six-month period perhaps, the collection period? Are those the right things to be doing to make sure we collect the claims that are outstanding?

Mr Whitley: I would like to tell you that putting private entrepreneurs out there to collect the money that's owing will be far more efficient because that's what they do.

Mr O'Toole: That's their main job.

Mr Whitley: They do it very well. This is going to get money into the hands of the people who deserve it very much quicker than they will ever expect to get it in any other way, because there's no way that any government can be as good as private enterprise. As far as I'm concerned, the government is not a good collector, and I believe the other people would do a better job.

1440

Mr O'Toole: You're a businessperson and a community person, and as a businessperson you want to be — I'm sure most employers want to be — a good boss. Would you agree with that or do you think there's an imbalance today, that there are a lot of bad bosses around, the OFL kind of thing I'm hearing?

Mr Whitley: I can only tell you that we visit all of our industries in the Trenval area and most of our commercial operations, and I don't find the anger and the type of thing that I've been hearing around here exists in the greater Quinte area. If there is some of that occurring, as a member of the chamber of commerce and the downtown business improvement area and a member of Trenval and other organizations, I don't see that, I don't hear it. I talk to these people. Many of them are my insurance — I don't hear this, so I don't know where that's coming from.

Mr O'Toole: I think we're working on it. It's been a beautiful visit here in this area. It's a wonderful community. Thank you very much.

Mr Chudleigh: I was just interested in your comments about downloading the costs to the employers. Could you expand on that? In what way are those costs being downloaded?

Mr Whitley: Whenever you make any kind of change to a program, in the collection process, for instance, it means that someone from the firm is either going to have to go to court, if it happens to come to Small Claims

Court, or if it happens to be any other particular thing that's added, it requires more paperwork, more reporting. I can tell you that one of the firms that I visited recently, with the federal, provincial and local, they had seven inspectors in one week. I have to tell you that gets to be pretty damned ridiculous. Nobody can put up with that. It disrupts the work, it doesn't allow you to carry on your business and it's got to stop.

Mr Lalonde: I'm very surprised to read this on page 2: "The proposed introduction of commercial collection services will impose additional costs to businesses. It is imperative that there be no costs to employers if they make settlement within a specified period." Who do you think should pay for it?

Mr Whitley: The cost of the collection procedure will have to be settled some way with the bill. Normally, what happens is if I have someone who doesn't pay me, I go to Small Claims Court and the costs are added on to the judgement and therefore it's paid by the person who is involved. I see this as happening. If an employer is that bad and refuses to cooperate and is clearly wrong, then the cost of collecting the money ought to be added on to the amount of money that's owing to the individual.

Mr Lalonde: That's not what it's saying here, though.

Mr Baird: I think you misunderstood it. It means the 45 days they have to pay. It takes 45 days.

Mr Lalonde: As long as the employee is not stuck to pay that percentage that has to be paid to the collection agency.

Mr Whitley: I would personally feel it would be very wrong if the legislation took any part of the employees' money away from them in the collection process. That would be a shame.

Mr Lalonde: Don't you think we should have the name of that employer published if he was found guilty?

Mr Whitley: If he is taken to court, it's certainly public knowledge, so there isn't any way that can be avoided. I don't know that you create a better atmosphere between employees and employers by putting them in the paper or making an issue of it in that respect. I think the normal method of reporting at the present time is sufficient.

Mr Christopherson: Thank you for your presentation. Just a brief comment on the idea that there are not many or any bad bosses, if you will, in the area: That's sort of surprising, given the amount of attention that the Screaming Tale got, which is from this part of the province, which is what the OFL and the NDP and anybody else who cares about working people I think would describe as a bad boss. That's a bottom-feeding approach to hiring workers, and the only saving grace is that it's shut down. I'll give you a chance to comment on that, but I want to get to a question.

You make the comment, or at least you underscore the comment in this report of a couple of Tory backbenchers that the "red tape commission recently concluded that many employers, especially small and medium-sized businesses, see Ministry of Labour laws and regulations as an obstacle to growth and job creation." I'm sure you can appreciate that this just brings out huge alarm bells from people in the labour movement and those who represent working people, particularly those who maybe

don't even have a union, and we've heard from some of those today. You go on to say, in terms of supporting Bill 49, "In this way, employers in cooperation with the people that work with them can compete" — quote and underscored — "in the global marketplace."

The presentation before you from Gavin Anderson from OPSEU, said, "Turning the labour market into a free market through the lowering of employment standards and other forms of deregulation in order to compete successfully against the Third World and other unregulated constituencies within the global economy does not advance our civilization." How would you respond to trying to reconcile those two different points of view of the same subject?

Mr Whitley: I think we're putting our heads in the sand if we feel that we can continue to operate the old way and if we don't have complete cooperation between the workers and the employers. The fact of the matter is that the Earth is changing and we have to change with it. We are going to have these people who will outsource in the Third World, and although we can't bring our prices or our labour down to the particular amounts that they charge and get away with, we still have to ameliorate some of the problems. We cannot continue to have our jobs go south of the border, go to Mexico, go to the Third World. We have to do something, so labour has to talk to management. They have to talk together like they do in Germany and some other places. They have to discuss the situation and agree on how we're going to fight this.

Mr Christopherson: Would you not agree that it would make for a better world if we all worked on trying to raise the standards in Mexico instead of trying to lower ours to theirs?

Mr Whitley: I think every country is endeavouring to do that. I know Canada spends a great deal of money in the Third World trying to raise their standards. I'm a member of the Rotary Club in Trenton and we spend virtually thousands of dollars to upgrade water systems in villages and educate the people and teach them how to do things. I believe that government can't do everything, I believe it's the people who have to begin to take some of the responsibility. It can't be totally the government. The government has to make regulations and do things that they think will enhance the life of the community, and I believe this government is endeavouring to do that. I may be a change that you don't like, sir, but I think it's something that has to come.

Mr Christopherson: With respect, I would disagree with the premise entirely, because Bill 20, which takes away environmental protection, is a responsibility of the government. People who destroy the environment can't be given a fine and a slap on the wrist and make things right. It's gone. That's all part of this government's view of global competitiveness.

Now we're into Bill 49, which is the bill of rights for workers. It's the only right that a worker has. One bill is their only right if they don't have a union. Everybody who's come in here representing working people has pointed out, lawyers have pointed out — you're going to hear from a church representative this afternoon — the labour movement itself, everyone has shown that this is taking away minimum rights from workers.

The Vice-Chair: I'm sorry to interrupt you, but we have now exceeded our time limit. Thank you very much, sir, for making your presentation this aft.

Mr Whitley: Thank you, Madam Chairman. A pleasure.

The Vice-Chair: While the representative from Communications, Energy and Paperworkers Union of Canada, Local 534, comes forward, I would ask the indulgence of the panel members here. There have been two cancellations on the agenda for this afternoon. One is at 5 o'clock; the Canadian Staff Union from CUPE has asked to be cancelled, as well as the one at 5:30, the Ontario Public Service Employees Union, Local 358. We have had as of today, since arrival, two requests for presentation time, and I would ask for either committee approval or disapproval to add at 5 o'clock Alan Whyte, labour employment lawyer from Belleville, and for 5:30, Colleen Sine from Solar Taxi. Are there any comments? All those in favour of doing so? Okay, thank you. We'll take the amendments as recorded then.

COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION OF CANADA
LOCAL 534

The Vice-Chair: Good afternoon.

Ms Linda MacKenzie-Nicholas: Hi. I'm Linda MacKenzie-Nicholas and I'm the president of Communications, Energy and Paperworkers Union of Canada, Local 534. To my right is Tim Newton. He also is a member of our local and is a steward. On my left is Brenda Briggs. I will be the spokesperson. I hope you welcome my sister and brother here, because it's a learning experience for them. It's the first time for them to ever see a standing committee.

I only have 17 presentations, so if you can share them, all right, because that's all I brought with me. They should be on their way around.

The Vice-Chair: Excuse me for a moment, please. We don't have those. We only have one right now for the sake of the Hansard.

Ms MacKenzie-Nicholas: They're on their way around.

The Vice-Chair: If you could just hang on a second while we pass them out, instead of eating your time up. If you'd like us to pass them out first so we can follow.

Ms MacKenzie-Nicholas: Whatever's best for you.

The Vice-Chair: Everybody got one now? Sorry about that.

Ms MacKenzie-Nicholas: That's okay.

As I said, this submission is made on behalf of the 200 hourly members who work at Budd Plastics in Cobourg. Our work is in the automotive parts sector as a tier one supplier to General Motors, Ford and Chrysler. We know first hand what "competitive" means in the global market. We live day by day with the impact of just-in-time inventory building, QS 9000, four years or less of life cycle for automobile parts. Due to just-in-time inventory demands and the unreliability of consumerism, we have about 35% of our membership that lives through frequent layoffs on a regular basis.

1450

We are no strangers to the harsh reality of the global marketplace. At one point, in order to secure our jobs, we took a 10% wage decrease. We did not do that out of pride but simply necessity. We have families, brothers, sisters, children, grandchildren and homes to pay for like any member of the standing committee before us here, and we pay taxes to the Ontario government. In fact, some of our present-day members have 40 years' service at our workplace. Whereas the building has been the same since 1948, our employer has been Canadian General Electric, the Complx Corp and, since March 1995, is now the Budd Plastics division. We have lived with change and we have worked progressively in most aspects through it.

What we expect from the Ontario government is fairness as workers, which includes the strong encouragement for growth of secure jobs, affordable wages and recognition for the economic value we add to society as fully participating citizens in our communities. We went through restructuring associates training and interest-based negotiation training, and those are the goals that the local has decided are important for all our members.

We have taken a look at the proposals found in Bill 49 to explore how they conform to our expectations from the Ontario government. The following is the result of our research on those issues.

Limitation periods for claims, proceedings and appeals: While the words "prompter, more effective and cost-efficient enforcement of employment standards" sound like an action plan that anyone would want to be a part of, we feel that there are more issues that need to be considered.

It has been our experience that workers, for whatever reason, right or wrong, are not always aware of their rights in the workplace, and neither are many managers. Quite often the impact of this lack of knowledge results in employees being denied legitimate rights. For example, in our own area, in the town of Port Hope, we are well aware of the situation of Screaming Tale.

In this case, the employer felt that it was within its rights not to pay its servers. Some of the servers themselves had been convinced that the employer's philosophy was also the correct one. How this issue was brought to light was through an employee working at that bar who had a friend with legal experience who informed the person that what this employer was doing was a violation of the Employment Standards Act. Still, this person felt too intimidated at that time to lodge a formal complaint with employment standards against the Screaming Tale employer. Fortunately, two other previous employees did lodge a complaint, but only after Northumberland Labour Council and the Northumberland Community Coalition organized a protest against the practices of the Screaming Tale wage — or lack thereof — policy.

This situation proves the difficulty of employees, first, to know what their rights are and, second, to obtain justice where their rights have been violated. We agree that claims that have gone on for a long time are difficult to investigate, but how does shortening the length of time to file claims promote the rights of the employee? How would shortening the length of time of filing a violation

have promoted the rights of employees at Screaming Tale in a more prompt, more effective and cost-efficient manner? We would like to suggest that this proposed change has no value added to employees who are victims of violations of the Employment Standards Act, whether intentional on behalf of the employer or not.

We of CEP Local 534 have, of course, a grievance procedure that can be found within our collective agreement. We have one year to file a grievance on any issue where a member feels their rights have been violated. In the almost 50 years our procedure has been in existence and the hundreds of people who have been in this workplace over time, the timing of when we file the complaint after the incident occurs has never been an issue. Our employer has never seen the need to bring that issue forward to the bargaining table. Therefore we feel, through our own practical experience, that the length of time to file a complaint should be a non-issue for the government and will not assist in any way to resolve violations of the Employment Standards Act.

Frankly, we do not see the need for the government to spend any time further on this issue at all. This proposed change does nothing to promote fairness, secure jobs, provide affordable wages or give recognition to the value to society of workers as fully participating members of our community.

What does concern us, though — and this is still part of the act — is “no changes are contemplated for time periods covering the issuing of orders or the start of prosecutions.” Two years to have to wait on the ministry to issue an order to pay a claim where there has been a recognized violation of the act, or to decide to not issue such an order, is simply too long. Where is the fairness in proposing a shortened time period to file a claim for the employee while the guilty employer could be rid of its obligations to follow the law for up to two years? Again, we do not feel that such suggestions would fall within our expectations from the Ontario government as working taxpayers.

Minimum and maximum amounts for employment standards claims: It is our understanding at this time that the Ontario government has withdrawn section 3 of Bill 49 that would have resulted in the placing of employment standards on the bargaining table. We are pleased to have heard of this move by the Ontario government and support it fully. This type of action by the Ontario government does fulfil our expectations as working Ontarians and members of CEP Local 534 at Budd Plastics.

Avenues for addressing violations of the Employment Standards Act: Our members do not support being treated any differently than non-unionized employees by our government of Ontario. We do not see how suggesting our union becomes the enforcer of the Employment Standards Act, instead of the government itself, promotes for us secure jobs, affordable wages or shows recognition from the Ontario government for us as valued, productive citizens in the province of Ontario. Belonging to a union is not a free service. We pay money for that representation. We decide at membership meetings monthly, through democratic procedures, the direction our local union takes.

Of course, the government is not a free service either. We pay taxes in order for the government to provide those services. We are well aware of this every time we pick up our paycheques, which is on a weekly basis. We do not agree that it's fair that our government should have the right to save money off the backs of local unions' treasuries. We do not agree that those who choose not to form a union should receive more services from the government than those who choose to form one. We feel that our government is taking unfair advantage of its policymaking powers by forcing us against our will to become financial enforcers of the Employment Standards Act in Ontario.

Our collective agreement is designed by members of CEP Local 534 and our employer. Therefore, it is only right and just that the parties who design the agreement are held responsible and accountable for its implementation.

The Employment Standards Act is a law of the province of Ontario. As such, it is up to the government to be held responsible and accountable for its design and implementation. If the government wants the union to financially police the act, then we suggest that the members of CEP Local 534 should have the right to sit down and bargain with the government all of the issues regarding the Employment Standards Act. How we see this proposed change is that the government would legislate a law that saves it money by taking unfair financial advantage of those who pay union dues.

There is also the concern of work overload. All but one of our union representatives in our local is 100% volunteer. It is difficult to do our production jobs and then go on to representing our members. It takes a great deal of time to investigate issues. We simply cannot afford to take on the government's workload. Additional work for our volunteers will not bring the members we represent more justice.

Perhaps the government is also unaware how long it could take to send a grievance to arbitration. It is possible to have to wait two years to get a grievance heard in front of an arbitrator. Leaving more issues and/or concerns to be resolved does not add up to more effective enforcement of the act or a happier, more productive workplace.

As the services of an arbitrator are quite expensive, the only difference will be that the members of our local will have to pay more to deal with violations of the Employment Standards Act for services that other workers obtain from the government directly at far less cost.

We feel quite strongly that these proposed changes under this section will be less cost-efficient to employees and members of unions. Again, these proposed changes do not respond to our interests of job security, affordable wages and receiving recognition for the economic value we bring to our communities as workers. In fact, we feel the government is penalizing us for being members of unions by providing us with fewer services than those workers who are not members of unions.

Clarifying entitlement to pregnancy and parental leave: It is comforting to note that this section appears to promote our expectations/goals from the Ontario government and we support these changes.

Summary: We feel strongly that this government appears to not understand what it is to work in a unionized environment. The advantage of democracy in a workplace appears to be lost somehow to a government that itself was elected through democratic processes. In fact, we would like to know how many of the Progressive Conservatives in government have actually been a union member for a period of two years or more. We do not feel there could be many who have been union members, as the lack of understanding being shown to unionized workers through these proposals by the Ministry of Labour is extreme.

1500

Our workplace represents democracy in action through joint committees, issue resolving, active listening, communication and consensus building. We know our employer would stand with us when we say this government should make the same effort to build relationships among all different sectors of the Ontario population.

With our submission, we wish to request that the government not only leave the broom in the closet but try a different method of housekeeping altogether. We feel that employees in our community need stronger enforcement of the Employment Standards Act. We feel that accessibility to employment standards needs to be improved for all complainants. We also feel the government should take on more responsibility to its constituents by communicating more frequently about the rights the people of Ontario have through the Employment Standards Act. We feel this type of communication and enforcement will help us to achieve our members' goals of fairness, growth of secure jobs, affordable wages, and recognition for the economic value we add to society.

With one exception only, as stated already, we feel strongly that Bill 49 does not fulfil our membership's objectives from the Ontario government as set out above.

On behalf of the membership of CEP, Local 534, we thank you for your time spent listening to our concerns.

The Vice-Chair: Thank you. We have less than one minute per caucus, starting with Mr Lalonde.

Mr Lalonde: If this Bill 49 receives royal assent, what will that mean for your collective agreement?

Ms MacKenzie-Nicholas: It will probably mean to us additional work that before we could have government assistance on, which was always much appreciated, because as we're volunteers, there's a lot of time we don't have the training and the education that maybe we should have to represent our membership. It has been wonderful to have the government assist us on those issues. So it will be definitely a problem.

Mr Lalonde: The fact that now your members will have to go through your union whenever they want to apply or if you get an employee who didn't get his proper salary or adjustment, would that incur additional expenses to your union?

Ms MacKenzie-Nicholas: Yes, it will, because usually these types of things have to be done between the hours of 8 and 5, and a lot of us work different hours than those, so our lost time will have to be covered, which means that will be a direct cost to the union. Our employer pays for every meeting that we have with management, generally, but for the additional investiga-

tion purposes, it will be a direct expense on to the membership.

Mr Lalonde: Will that mean a possible increase to your members?

Ms MacKenzie-Nicholas: It could be, yes.

Mr Christopherson: Thank you very much for your presentation. It's good to see you brought new people to be exposed to and experience the political process, such as it is. So I'm glad to see you're both here. That's good leadership on your part, I would say.

Ms MacKenzie-Nicholas: Thank you.

Mr Christopherson: I would like to take a minute, because it's unfortunate that a lot of the employers and chambers of commerce folks who come to these hearings, because we tend — at least my party is focusing primarily on the bad bosses, that we see all employers that way, and that's not the case. The world is not made up of all bad people; at least I don't believe that. But unfortunately, something like the Screaming Tales is the best example of the fact that that type of bottom-feeding existence does happen, and that's why there has to be protection, so we can only do this in this area.

I'd like to take a second and ask you to kind of expand on that. Exactly what was going on? Again, you've noted that people were afraid to make a complaint, and we've tried to say that over and over, that shortening the time will deny people rights because they're afraid. Can you talk to us a little bit about went on at the Screaming Tales?

Ms MacKenzie-Nicholas: What I can say in that one case is that individual was terrified and didn't make the complaint and continued to work there. She was only 19 or 20 years of age, somewhere around there. It was her first job and she wanted the money. It sounds like there was some opportunity there, it sounded good what maybe they could do, but when she found out that this was a violation of the act, she would not go forward. She worked in that workplace and never got paid and never laid a complaint.

Two of their previous employees did lay a complaint and the government did respond to it, but this woman who didn't do it, at the end of the day, what happened is that Screaming Tale in Port Hope closed down and here's this woman who had worked all along, saying, "Well, maybe this'll work out," didn't lay a complaint, and that employer left. It snuck out the back door; you're probably aware of that. It literally snuck out the back door. She went to work that night and she didn't even know she no longer had a job. It was very frustrating. It was very conflicting in the community. There were lots of arguments in between. But not all employers are like Screaming Tales, thank God for that, but very despicable.

Mr Christopherson: I think it's fair to say that points out why you're here fighting to protect these rights —

The Vice-Chair: Mr Christopherson, I think that it's fair to recognize the minute was expired, and another minute as well. Mr Ouellette?

Mr Jerry J. Ouellette (Oshawa): I believe Mr Baird has a question.

The Vice-Chair: Mr Baird, any questions? Mr Tascona?

Mr Tascona: Thank you very much for your presentation. Does your grievance procedure work very well at your company?

Ms MacKenzie-Nicholas: I think our grievance procedure works very well. The problem is once it gets outside of the workplace and it goes to an arbitrator.

Mr Tascona: How many arbitrations do you have a year?

Ms MacKenzie-Nicholas: How many arbitrations have we had recently? One.

Mr Tascona: Do you cover health and safety act matters in your collective agreement?

Ms MacKenzie-Nicholas: Yes, as well as the act.

Mr Tascona: Do you cover the Human Rights Code in your agreement also?

Ms MacKenzie-Nicholas: As well, yes. The Ministry of Labour comes down, though, from health and safety. It was just there yesterday.

The Vice-Chair: Thank you very much for your presentation.

BUILDING A STRONGER INVOLVED COMMUNITY

The Vice-Chair: I'd appreciate it if the representative from BASIC would come forward, please. Good afternoon, sir. I would ask you to introduce yourself to the panel and the public, please.

Mr Rob Hutchison: My name is Rob Hutchison. I'm here as a member of the steering committee of BASIC, which is a community organization representing 42 agencies, organizations and labour locals and 300 affiliated individuals who are affected by the provincial government's austerity program in many different ways, of which Bill 49 is one.

The Vice-Chair: Excuse me. Could I just ask if you have a prepared presentation for the members of the committee?

Mr Hutchison: No, I don't. I'm just reading it into the record.

I'm not going to go into the specifics of the act, because a number of people have already addressed them. I'll just say a few things about it.

The first aspect is the Bill 49 items of concern.

Bill 49 makes an inadequate piece of legislation even worse for employees. We are sure that other presenters will have given detailed analyses and objections to Bill 49 to the committee. Particularly, we wish to endorse the position taken by Parkdale Community Legal Services in their submission of August 19, 1996.

I would like to pass to some general recommendations which have come up.

The Employment Standards Act should be amended to change the court system, if you're worried about small amounts, so they can be dealt with in the manner of Small Claims Court, provided there are changes to the legal aid plan and increased funding for that plan that allows the legal aid plan to cover employment cases. In that way you can get rid of the objection that people don't have the money to afford lawyers.

Allow:

Third-party complaints through legal agents such as the legal aid plan. Lawyers would act as the gatekeepers to the system to weed out frivolous claims.

Full audits of employer practices triggered by individual complaints against employers by job category through full company audit on an escalating scale depending on the frequency of non-compliance.

Fines for employers who are in non-compliance, after the first instance, to discourage repetitive occurrences; who are in repeated non-compliance; and who do not pay orders within fixed time periods.

Mandatory posting of the act in all workplaces. This should be a basic requirement.

Shorter time limits on ministry investigations.

Heavy penalties for firing workers attempting to enforce the act; otherwise the act is relatively worthless.

What I would like to address in a little bit more detail is the economic context and the motives or assumptions that appear to be behind Bill 49.

The provincial government's presentation of Bill 49 proceeds from the assumption that the workplace, in the words of the Minister of Labour, needs greater flexibility and self-reliance in the procedures for compliance and enforcement of the Employment Standards Act. The minister apparently wishes to make the employment standards complaint system work more efficiently; that is, release employers from red tape so they may have more time to produce their companies' products. In its rush to achieve these perceived efficiencies, the government appears to be missing possibly unintended but still pernicious effects of the bill when placed in combination with other economic and social factors.

The government's presentation of Bill 49 takes place in an economic context of persistent high unemployment and falling real wages. Economists from banks to labour unions are saying that unless consumer confidence is revived, the economy cannot be revived. Those economists cite high real interest rates, high unemployment, plus government cuts and falling real wages as the main causes of low consumer confidence. They are the largest drag on the economy today.

Some statistical and analytical evidence is worthwhile here.

It is widely recognized that real wages have been dropping over the last 20 years. According to the Canadian Council on Social Development, 1996, the average income for most families — that is for the lowest 60% of families by income — dropped between 2.7% and 31.9% between 1984 and 1993. Only social program transfers prevented the drop from being worse. Recent cuts to social programs at both the provincial and federal levels will exacerbate this trend and further weaken economic demand.

The effect of unemployment has been massive, pervasive and vastly underestimated by most governments and commentators. Unemployment has been over 9% for 71 consecutive months in Canada. In Ontario, unemployment has persistently ranged from 8% to 10% in the 1990s. Based on a Statistics Canada survey of consumer finances, the current reported Ontario unemployment figure of 8.5% represents 526,000 individuals — that's actual, unadjusted figures — and between 789,000 and

946,000 family members affected by unemployment. Is it any wonder that consumer confidence is undermined, tax revenues have dropped and government deficits have increased?

1510

Underemployment has also become pervasive. In 1992, across Canada, 42% of workers were employed part-time, employed full-time on a temporary basis, or unemployed for part of the year. That's from the Ontario Royal Commission on Learning. Similar figures persist into 1996. For example, recently the Toronto Star reported that the use of temporary workers has risen by 421% since 1971. This is a direct result of dropping employment opportunities. Ontario has not escaped this development.

Employment insecurity has soared. Between 1984 and 1994, the proportion of new jobs that lasted between one and five years dropped from 21% to 16%. The average length of one-year-plus jobs today is only 3.8 years. Over the same period, new jobs lasting less than one year increased from 59% to 64%. Given these numbers, it is hardly surprising that most Canadians — 56% — believe that the middle class is shrinking and they are next, according to a Vector Research and Development poll.

The general effect of Bill 49, however inadvertent, will allow employers more latitude to avoid their legal responsibilities to their employees if they are so inclined. It will make employees more vulnerable to exploitation and undermine their bargaining position for better wages and working conditions. This in turn will undermine the worker's confidence in the security of his or her work placement and their economic expectations. It will, perforce, undermine workers' confidence as consumers.

Fundamentally, Bill 49 proceeds from the unspoken and untested assumption that less regulation — call it flexibility, self-reliance or efficiency — leads to more economic activity, which will lead to greater profits, which will lead to greater prosperity. Wages, benefits and working conditions do not enter the equation of the government's assumption except as indirect byproducts of economic activity and profits. There may be some truth to this assumption, but it is partial at best. Wages and benefits, and the consumption they represent, are an essential counterpart to profits and prosperity in the economic cycle, especially for small business.

In short, the government's position assumes that the role of consumption is a given. But workers are consumers, and worker confidence directly affects consumer confidence. Workers not secure in their employment and employment prospects do not make confident consumers.

As indicated here, the latest evidence demonstrates that unemployment, underemployment and job and wage insecurity persist at high levels for a majority of the population. That's the primary source of the lack of consumer confidence. Two thirds of demand on the spending of the Canadian economy is based on the spending of Canadian households and their investment in housing.

At least 75% of Ontarians are workers working for a wage. As a class, they will be negatively affected, directly or indirectly, by the changes proposed to the Employment Standards Act.

Bill 49 will tend to have the effect of further undermining worker-consumer confidence even beyond the effects of high unemployment and declining wages. This in turn will tend to undermine incomes, tax revenues and lowering the deficit. It will tend to create conditions that undermine aggregate demand and thereby exacerbate conditions that lead to more business bankruptcies.

If the government is serious about lowering the deficit, what purpose can Bill 49 possibly serve? Or, as some critics suggest, is the government really only interested in giving some of its business supporters a quick fix?

If some businesses demand government create conditions to help them cut their costs at the expense of wages and benefits, as the government indirectly has through Bill 7 and now Bill 49, it enters a vicious cycle. You get cuts, then the fix cuts wage and benefit costs and that satiates the situation momentarily. But effect of the fix is unintentionally pernicious. It also cuts demand, and when demand falls, so does business revenue and we're in that cycle now. Gasping, desperate, business demands another fix and more cuts. Does the government give it to business, or some business we should talk about, or does the government realize the supply-siding the junkie just doesn't work? At best, the government's actions that induce lower wages and benefits is a short-term fix which undermines the solid mid- to long-term recovery.

On the contrary, prosperity depends on spreading largess around and letting demand work through the economy to everyone's benefit. Bill 49 is not part of the solution; it almost certainly could be part of the problem.

If the government really wants to improve the economic situation, it could do all or some of the following:

The persistent causes — and there's not a lot of talk about the real causes — of unemployment and underemployment and low consumer confidence are high real interest rates, free trade and the effects of semi-automation — computerization and robotics etc.

The Ontario government could pressure the federal government to adopt a policy of pursuing the lowest possible real interest rates; pressure the federal government to renegotiate the free trade deal to allow for performance agreements in key sectors to protect our own sectors and our own jobs; create jobs in the non-profit social sector in areas such as education, infrastructure, housing, fisheries, forestry, agriculture, health, social services, communications and transportation.

I refer you to *The End of Work* by Jeremy Rifkin and *The Jobless Future* by Aronowitz and DiFazio where they point out that semi-automation in material production, distribution and finance has created a permanent lack of jobs in those areas. The government is currently going in the opposite direction in the mistaken belief that enough material production and distribution work can create a sop for unemployment. For most Ontarians, that is the road to ruin.

The government could also try limiting overtime to cause full-time job openings; shortening the workweek in selected sectors at the same pay, the difference in costs to be made up in productivity gains, especially in the strong export sector which is the main beneficiary of current government policy — you can see the results in any newspaper these days, as this has been done success-

fully in Europe; promoting work sharing; limiting the use of part-time work to promote full-time employment; advancing benefits to full-time and part-time workers on a pro-rated scale to promote worker-consumer confidence and economic demand. Thank you.

The Vice-Chair: Thank you. We have just over one minute per caucus. I would like to start with Mr Christopherson, please.

Mr Christopherson: Thank you for a fascinating presentation. We don't have a lot of time, so I'll just ask just a very simple question. Given all that you've researched and understand, and it's quite impressive, what do you think a young person sees right now who's seeing the end of their school career looking at adulthood, employment and their life? What's in front of them the way we're going with this?

Mr Hutchison: We know that youth unemployment is really high and we also know that those — I believe the stat is up to 29 years — who are 29 years old or less are earning less than their parents did at a similar time in their life. That does not bode well for the future of the province or the country because that means we're going to be looking at even further weakened economic demand and so everyone will suffer.

I don't think small business has thought this out. I really don't. I talk to small businesses, I deal with small businesses myself and frankly I don't think there's the unanimity of opinion out there that the government seems to think. A lot of small businesses are scared. It's like this: When I worked for business, costs are one thing, but you've got to have revenues. You can have the lowest costs in the world, but if you don't have revenues, you've got to close up shop. I've worked in the private sector. I've worked in the non-profit sector. I've worked for government. There are good, creative people and good enterprise in all sectors and really the mythology that it's one or the other is nonsense. Please, let's be realistic about this.

1520

Mr O'Toole: Thank you very much, Rob, a very complex presentation. I would like a copy of it and if you want, I'll give you my card afterwards.

Mr Hutchison: Sure.

Mr O'Toole: It's very difficult to sit here and listen, but I want to make a couple of points in the few seconds. Posting the act in the workplace is a further cost to business. That implies that every employer's bad. The reality is that very few employers are bad bosses and if the OFL has statistics and data, I want to hear it and see the numbers and verify them, because why should we discourage more jobs by more red tape? That's not a solution. That's one.

Small claims and minimum standards: The minister has clearly said there is no minimum standard. I also ask the question: Should we spend \$1,000 to collect \$50 or should we just have a process to pay the \$50?

You talked about economics. That's my background. When you said when demand is low, what happens? Price falls. If demand is low for labour, the price should fall.

The Vice-Chair: Thank you, Mr O'Toole. I'm sorry.

Mr O'Toole: I want to discuss your paper with you. It's very flawed. Thank you.

The Vice-Chair: Thank you very much for making your presentation to this committee this afternoon.

SISTERS OF PROVIDENCE OF ST VINCENT DE PAUL

The Vice-Chair: I would ask the representative from the justice of the peace office of the Sisters of Providence of St Vincent de Paul to come forward, please. Good afternoon. Welcome to our hearings and I would ask you to introduce yourself, please, for the sake of Hansard, committee members and the public.

Sister Pauline: My name is Sister Pauline and I'm the director of the justice and peace office of the Sisters of Providence of St Vincent de Paul of Kingston.

The Vice-Chair: I'm sorry to interrupt again. Could you just allow us time here to pass out this so that we can follow along with you? Thank you. Sorry for that interruption. Go ahead, please.

Sister Pauline: My name is Sister Pauline and I'm the director of the justice and peace office of the Sisters of Providence in Kingston. With me are one of our members, Lucy Myers, and my backup here on the front row, Sister Mary. This is the first time I've ever done anything like this, so with the people who sat with Linda I'm a little bit nervous myself.

We thank you for the opportunity to speak regarding the amendments to the Employment Standards Improvement Act, especially how it is affecting Ontario's working poor. You may be wondering why a religious is speaking here today. Work is about living, an essential and noble part of living. Religion is about living, too — a way of living.

The churches have a long history of powerful and liberating social teachings. In 1971 at the World Synod of Bishops we were called to act on behalf of justice as an important part of the gospel.

Traditionally, we sisters have been involved with works of education and charity, with children, the ill, aged, orphaned, poor, prisoners, marginalized. Today we recognize that we must not only continue these works, but go beyond them to the practice of social justice; that is, why do we have prisoners, homeless, marginalized? Charity is bestowed on an individual. Justice is an inherent right of an individual. The right to work is an inherent right, including dignity and justice on the job.

When people are without the means to earn a living and must go hungry, even homeless, they are being denied basic rights. Similarly, when workers who have jobs are denied minimum employment standards, they are being denied basic rights. Society must ensure that these rights are protected, that minimum conditions of economic justice are met for all our sisters and brothers. The test of any institution, any society, any government is whether it enhances or threatens human life and human dignity. The worth of a society — and the worth of a government, I'd say — has always been tested by its treatment of the poor and the marginalized. People are more important than things.

The most serious long-term effect of the alarming unemployment situation in our world today is the damage to the soul of an individual, of families, of neighbour-

hoods. As despair and hopelessness grow, there will simply be less regard for social values and norms. This has led to and will continue to lead to collective actions of civil disobedience and upheaval.

On August 19, the Minister of Labour told this committee that we have to confront what she called "the dramatic changes we are seeing in the nature of the labour market and the workplace." We agree completely with her assessment of the fundamental changes in the world of work.

We see it all around us, in the country at large and here in eastern Ontario. The national trends are by now well known. Canada is becoming a country more unequally divided between rich and poor, with a middle class that is seeing its once-solid prosperity erode. One of the main reasons for this is the changes in the labour market that the minister cited last month.

Most of the good jobs that were once the wellspring of the dignity of working people are disappearing. In 1994, there were about 74,000 jobs in the pulp and paper industry. By the end of this decade, between 15,000 and 20,000 of these jobs will have vanished from workplaces like the Strathcona Paper Co near Newburgh, just north-east of here. Last Tuesday, this company stated that 16 positions will be eliminated from this facility by October 18, as the first phase of a two-part downsizing. Most of the good jobs that once existed in Kingston at K D Manufacturing and Kingston Spinners have now disappeared. Alcan, which once employed thousands, now has a few hundred. Layoff notices have been issued to workers with over 20 years of seniority.

The jobs that are replacing work in our mills and factories are concentrated mainly in the service sector: some high-end jobs as consultants and investment analysts and a lot of low-end jobs working as security guards, cleaners, waitresses and so on. It is no wonder that the landmark report by the Economic Council of Canada that pointed out these trends was titled *Good Jobs/Bad Jobs: Employment in the Service Economy*. The council reported that temporary help agency work, mostly done by women, tripled during the 1980s.

The number of Ontario workers earning only the minimum wage has risen by 40%, to 420,000, in the past five years, according to the labour ministry. Statistics Canada tells us that the number of young men working for less than \$13,000 has doubled in the past two decades.

The kind of work now available is familiar to anyone who has looked for a job in recent years: part-time, temporary, contract. It might involve doing home sewing or informal home day care. It might mean keyboarding data for a numbered company, contracted by a major transnational corporation. It might be a matter of being always on call, beeper at your belt, should you be needed any time, day or night.

One thing that such jobs will involve is that wage levels are well below those of full-time workers, such as those who remain at Strathcona Paper or Alcan. Benefits will be minimal, if they exist at all. The only protection that our emerging just-in-time workforce enjoys is the rules set by the government in legislation like the Employment Standards Act. As the economic council put it,

and this was before the massive recession of the early 1990s and the major losses of good jobs and the restructuring that followed, "The labour market is offering economic security to fewer Canadians."

1530

How does this play itself out in Kingston? Two years ago the correctional workers program at St Lawrence College received 547 applications for 54 places. The Corrections Canada regional office has 3,000 applications on file for 100 openings. It's a tragic comment that the people in our community have realized that one of the few jobs offering any security is that of a jail guard. With a possible shutdown in the Quinte Detention Centre at Napanee, even that looks less solid.

Hospitals will be closed or have their staff reduced. The public sector, once a key to Kingston's labour market, is being decimated. Our order runs two health care facilities in Kingston. Forces beyond our control have imposed a now common austerity regime on us. Reluctantly and after much agonizing, we have been forced to reduce employment.

In the future the health and educational services that remain will be increasingly supplied by contingent workers with contract or temporary jobs. Because of the insecurity in today's working world, people in such jobs are extremely vulnerable. Pope John Paul reminds us that what he calls "the plague of unemployment" constitutes "a basic moral disorder."

Today's unemployment, even at the top of the business cycle, has not fallen much below 10%. There is a vast pool of potential applicants for any job. Job fear stalks the land. People are more afraid than ever to stand up for their rights to decent employment standards. This means that the balance in the employer-employee relationship, historically skewed in the direction of the employer but tilted in the general direction of equality by improvements in the labour standards laws over the past 30 years, is again tipped in favour of the employer.

Companies are just as aware as their employees of the conditions in the labour market. Some, particularly the bigger firms and institutions, can be expected to continue shedding regular workers and purchase the service of people on an as-needed basis. Other employers, spurred on by increased competition or simple greed, or both, will use this opportunity to take advantage of vulnerable workers, violating their legal rights with respect to minimum wages, overtime, vacation pay, maternity leave and so on. Just this year, as we've heard today, we hear the news that two restaurants have been forcing their employees to work for no wages at all, telling them to content themselves with tips.

Our concerns about Bill 49 are grounded in these changes in the world of work. Our response is framed with a number of questions that we hope the government will be able to answer before proceeding with Bill 49.

As many presenters have stated over and over again this morning and again this afternoon, the labour standards act is the only defence against unscrupulous employers that is available to the growing pool of unorganized contingent workers, many of them women, in the service sector. The proposed changes are a clear signal that the province of Ontario wishes to be less

involved in enforcing minimum standards, leaving it up to contending parties to resolve their own disputes. The changes would send disputes over labour standards to court, an expensive place where the working poor feel powerless, to say the least, particularly when they speak little or no English.

Is the government prepared to add the necessary new money to the legal aid budget to enable the working poor to seek legal representation when their rights are violated? Can the government tell us how such workers, many of whom juggle two or more jobs, together with family responsibilities, will be able to take time away from work to pursue the time-consuming process of private litigation?

Private litigation as a means of resolving any and all disputes is very popular in the United States. Is the government's intention to move in the direction of an American style of labour standards? Has it done any analysis of the effect of using the courts to enforce labour standards on the position of the working poor in that country?

The proposed changes would also privatize the collection of claims under the Employment Standards Act. The fees of private collection agencies may be deducted from any amounts owed to workers. According to press reports of the government's own internal reviews, it is better at collecting debts owed to it than are private agencies.

If the government is concerned with making the process more efficient, as the minister stated before this committee last month, has it done any analysis of the efficiencies generated by private collection of ESA claims?

Litigation and privatization are only two outstanding concerns. We are not experts in labour relations, but we are concerned about the retreat from active enforcement signalled by this bill. We have several other questions we hope the government will be able to answer before proceeding with it.

Given the major changes in the world of work we have described and that the minister has acknowledged, changes that are likely to mean more hardship for the most vulnerable workers, would it not make more sense to move in the opposite direction, with more direct enforcement of the Employment Standards Act? After all, as has been said, this act is the only real protection available to the unorganized working poor. Why not creatively and vigorously enforce the Employment Standards Act so that it supports the growing number of working poor, in particular single women and their children, indeed all children?

Should we not be making it more difficult and costly for employers to violate the law rather than making it more difficult and costly for workers seeking damages from lawbreakers?

Should we really be concentrating on the courts and private collection agencies preventing violations of the law from happening in the first place? Our experience in decades of health care delivery has taught us that prevention is much more important, not to say efficient, than treatment.

The Employment Standards Act is vital to a healthy workplace characterized by fairness. Why not enforce it? Isn't this why we have laws in the first place?

The proposed changes indicate that the government regards the cost and responsibility of enforcing the labour standards act as too onerous. Active enforcement of its own laws by the government will no doubt decline.

We seem to be offering the following advice to the working poor in their encounters with unscrupulous employers who are far more powerful than they are: "You're on your own." This is apparently what the minister means when she speaks of the need for self-reliance. When the labour minister appeared before you last month she also underlined the need to help the most vulnerable.

The whole sad affair brings to mind the Orwellian world described in Jan Wong's current bestseller *Red China Blues*. The party "said black was white and white was black...and there was not a single murmur of dissent."

At least here in Ontario there has been some dissent, and it has not taken the form of murmurs.

Our Canadian bishops state, "By creating conditions for permanent unemployment...there is a tendency for people to be treated as an impersonal force having little or no significance beyond their economic purpose in the system."

To this one could add that the new class of just-in-time workers, contingent workers, call them what you will — they're really the working poor, the term that ought to be used here — is seen by those who concocted Bill 49 as having little or no significance beyond economic purpose.

For these remarks I take inspiration from the reluctant Jeremiah of old, when confronted with injustices of his day: "If I say, 'I will not mention this...' then within me there is a burning fire shut up in my bones. I am weary with holding it in. I cannot."

This must be said.

Thank you for this opportunity.

The Vice-Chair: Unfortunately we will not be able to address any questions. We're two minutes over the allotted time.

1540

KINGSTON AND DISTRICT CUPE COUNCIL

The Vice-Chair: The Kingston and District CUPE Council. Before you start, please identify yourself.

Mr John Platt: Needless to say, I'm not Gloria Morris. Gloria is a school board worker and is unable to get the time off. My name is John Platt. I'd like to thank the committee for the opportunity to speak.

I work as an electrician at Queen's University and I'm a member of CUPE Local 229, Kingston Heating, Maintenance and Dietary Workers Union. I am here on behalf of the Kingston and District CUPE Council, which represents 24 locals covering approximately 5,000 workers, which includes municipal, hospital, school board, university and utility workers, to name a few.

The council believes, as do most working people, that the Employment Standards Act is a minimum standard which was created to provide basic rights for all working people in Ontario. The Minister of Labour has described these changes as housekeeping amendments that will facilitate administration and enforcement by reducing

ambiguity and streamlining procedures. We believe that these proposed amendments will significantly undermine workers' rights by frustrating their legitimate claims. Even the title, Employment Standards Improvement Act, might leave one to believe that minimum standards were being improved, but only employers will see any improvement.

Due to time and other restraints, this presentation is limited in scope, but the council supports the positions presented by the Ontario Federation of Labour and the Ontario division of CUPE.

The first point I'd like to speak to is the restriction of the enforcement of the act. The change requiring unions to enforce employment standards is an unfair shift of the burden in both financial and human resources. As a past chief steward and president of my local, I know all too well the long hours spent investigating and preparing grievances after having worked my regular shift. There is always pressure to settle grievances before going to arbitration because of the cost and time required, which usually means settling for less than the full entitlement. If unions proceed to arbitration, there's no guarantee that the results will be consistent, as is the case with employment standards officers. If a member is not satisfied with representation by the union or even the ruling that results, that member could file under section 74 of the Ontario Labour Relations Act, which would require more time and financial resources from the union even if there is no merit to the complaint.

With the elimination of being able to file both a civil suit and an employment standards complaint, non-unionized employees will lose their leverage to force an early settlement. Generally, the cost of litigation would deter many from pursuing civil action, but now, with only two weeks to withdraw an employment standards complaint, many will lose their opportunity to collect the full damages owing to them if they decide to go through with a civil suit.

Next I want to deal with the allowable maximum and minimum claim amounts. Although no minimum has been set, it has been suggested that \$100 might be an appropriate figure. This would force a person working for minimum wage to go to Small Claims Court if an employer refused to pay for a statutory holiday or for, say, 12 hours of overtime. People who make minimum wage generally cannot afford the time off work to attend or pay any of the associated costs of filing a claim in court. Similarly, an employee who is owed over \$10,000 would have to bear the cost of litigation to recover the full amount that is owed. Worse yet, this limitation allows the employer to keep any amount that falls below or above these set points, which could encourage some employers not to pay their workers for the full value of their labour. Why should any employer be allowed to legally steal from their employees?

New limitation periods: Currently an employee has up to two years to file a complaint. The ministry had two years to investigate and a further two years to collect the money owing from the employer. The only change was to restrict the amount of time the employee has to file the complaint from two years to six months. Despite the act's prohibition against discipline or discharge of employees

who have filed a complaint, many employees file only after they have found a new job. In this tough job market with such high unemployment, workers will be forced to wait and perhaps forgo filing for their rights.

I experienced just such a situation when I was a second-year apprentice working on a non-union construction job in the mid-1970s. My employer refused to pay for New Year's Day. When I questioned him, he responded with, "Why should I pay you for not working?" and elaborated on how grateful I should have been to be paid for Christmas and Boxing Day and the bottle of rye that he gave each of us as a Christmas bonus. I raised the issue again when Good Friday was coming around. His response was to lay everyone off on the Thursday before and brought them back on the following Tuesday, thereby trying to get around the qualifying days.

This time I took my complaint to the ministry. I was awarded the pay owed to me and I told the other workers all they had to do was file a complaint. They were afraid of losing their jobs, so they did nothing. They were married and had children. I was laid off a week before Victoria Day and was never recalled. By then construction had picked up and I found other work. I later found out the employer had stuck at least two of my fellow co-workers for over two weeks of pay. He just vanished. We need to have iron-clad protection for workers who come forward, without restrictions or reductions on the time they have to come back and file a claim.

Employment standards to be determined through concession bargaining: I understand this has been pulled back by the government, but I'm afraid it'll come up in phase 2 of this review. Employment standards are considered to be minimum standards of workplace rights which were intended to provide minimum standards of decency for all workers. This change will erode these standards, as employers are allowed to roll back long-established, fundamental rights. Some locals will resist this type of concession bargaining, with the inevitable increase in strike action, but smaller, weaker locals may succumb, which will lead to differing sets of standards in different workplaces. With recent funding cuts to many of the employers that bargain with CUPE, there's been added pressure to accept these kinds of concessions.

If employers are unsuccessful in bargaining concessions, they will turn to contracting out to private employers who will exploit the changes in this bill to the fullest. An example of that is Queen's University. They hired Marriott 20 years ago to get around having to pay those people pensions and other benefits that other workers at the university now enjoy.

Private collection of ESA awards: This proposed amendment releases the government of responsibility of enforcing the act and will lead to employees receiving considerably smaller settlements. Employees will now be required to pay a fee to the collector and be pressured into settling for less than what is owed to them. It doesn't seem fair or just.

In conclusion, these changes negatively alter the manner, duration and substance of claims under the act and will limit the ability of workers to enforce their rights. Therefore, employers will face fewer complaints and will even be given a break at the workers' expense.

The government will transfer the cost and responsibility of administering unionized complaints on to trade union, and the collection of non-unionized employees' claims to the private sector. Clearly the Ministry of Labour is attempting to rid itself of the cost and responsibility of enforcing the act.

These changes are detrimental to workers and to unions. The Kingston and District CUPE Council opposes these changes and respectfully requests that the committee seriously consider a retraction of this bill. Thank you.

The Vice-Chair: I thank you for your presentation this afternoon and we'll start off with the government side. Mr Tascona, there are approximately two minutes.

Mr Tascona: Does your collective agreement deal with health and safety?

Mr Platt: It has a very general clause covering health and safety as it pertains to the act.

Mr Tascona: Does it deal with human rights, your collective agreement?

Mr Platt: Only around sexual harassment at this time. We've been trying to negotiate updated language.

Mr Tascona: If there was a problem with those provisions, they would be covered by the grievance procedure?

Mr Platt: To the degree that provisions in the collective agreement cover it. They are very limited at this point in time.

Mr Tascona: But your grievance procedure, does it work successfully or are there problems with it?

Mr Platt: There's difficulties with it. It's a long process and the employer, of late, has decided to take more cases to arbitration rather than settling them, and then when we get to the arbitration hearing, comes down with settlements at that time and the pressure is on.

Mr Tascona: How many arbitrations would you have a year, normally?

Mr Platt: In my local?

Mr Tascona: Yes.

Mr Platt: In the last year, I'd say we've had about five.

Mr Tascona: About five, and that's the normal amount you have, or is it less?

Mr Platt: The year before we were in a strike situation so we had many more. Prior to that, there were many less.

Mr Tascona: And you have expedited arbitration under your collective agreement?

Mr Platt: As is allowed in the Ontario Labour Relations Act, yes, we can address that.

Mr Tascona: With respect to the changes to pregnancy leave and vacation pay, do you have any problem with those changes?

Mr Platt: No. That's one of the very few areas that adds an improvement. My only concern is, if it's not enforceable and members still fear for their jobs, they will not come forward.

Mr Tascona: My understanding is that the one thing they have prioritized is dealing with pregnancy leave and they've been quite successful in that area. Other than that, our difficulties with it are not so much the enforcement, because employment standards officers now have responsibility for collection, and we're putting it into another

area for that to be done. But it's the insolvency that we're having the problem with, because of the fact that bankrupt employers don't have any money.

The Vice-Chair: Excuse me, Mr Tascona. I'm sorry, we've expired time. Mr Lalonde.

Mr Lalonde: Did your council ever have to file a complaint before about a claim?

Mr Platt: A claim for what?

Mr Lalonde: A claim for, let's say, severance pay, holiday or overtime?

Mr Platt: Our local's never had to file one.

1550

Mr Lalonde: Never had.

Mr Platt: For overtime, yes, but not for severance pay or —

Mr Lalonde: For the overtime, what was the longest period for your claim? Was it over six months or over a year?

Mr Platt: To be filed?

Mr Lalonde: Yes.

Mr Platt: Our collective agreement requires us to file within 15 days.

Mr Lalonde: Yes, but for the period of time that the overtime wasn't paid for?

Mr Platt: It's usually just a few hours, a few days at a time.

Mr Lalonde: Because you seem to be saying that the system doesn't work, the actual system that we have in place doesn't work.

Mr Platt: That's right. For non-union people; for the unorganized.

Mr Lalonde: How about the union people?

Mr Platt: For the unorganized it does not work. For unionized people we have grievance procedures and it's much more efficient. And they have the protection of the union not to be fired.

Mr Lalonde: Do you think the fact that we'll be going to the private sector for collection purposes — is it going to be better?

Mr Platt: No, I don't.

Mr Lalonde: It won't be better?

Mr Platt: No.

Mr Lalonde: Why would you say it's not better?

Mr Platt: Because the private sector's going to take a cut off the top, a fee for collecting the money. I'm not sure what their fee will be or whether it will be based on a percentage or on a flat rate, but certainly they'll be wanting to get their fee as soon as they can so there'll be pressure to settle for less than the full amount.

Mr Lalonde: You also said you were laid off just prior to a stat holiday. How many years, or how long were you with that firm?

Mr Platt: I was with that firm less than a full year. I'd started the previous summer.

Mr Lalonde: And were you aware of the employment standards at the time?

Mr Platt: I was aware of parts of it. I certainly looked into it more when he denied us the pay for New Year's Day.

Mr Lalonde: And you did file a claim after?

Mr Platt: Not until after he pulled the stunt around Good Friday.

Mr Lalonde: The fact that you had —

The Vice-Chair: Excuse me, Mr Lalonde. Sorry to cut you off, but going over again.

Mr Christopherson: Thank you for your presentation. Mr Tascona asked a couple of questions I'd like to follow up on. One is the issue of insolvency and the responsibility of the federal government. You would be aware, being a labour leader, that this government shows in Bill 7, where they didn't hold any public hearings and didn't talk about it during the election campaign, to gut the employment wage protection plan so that you can only collect \$2,000 instead of \$5,000. You can't collect for termination or severance. I would argue — and I don't know if you agree — that if the government really cared about workers getting wages from bankrupt employers, they wouldn't have gutted that plan as a first step.

The second issue is, he has a couple of times now asked the question about whether or not collective agreements cover human rights and the Occupational Health and Safety Act, and there's a distinct difference here because there's already involvement by those ministries whereas now there won't be any. But I want to ask you, if this is such a great thing you've already got, did you ask the government to do this? Did you ask them to give you the Employment Standards Act?

Mr Platt: No, I didn't.

Mr Christopherson: Why didn't you ask them to do this to you with the Employment Standards Act?

Mr Platt: If anything, I would want them to improve the protection for workers, not to take away benefits or take away from the workers.

Mr Christopherson: What does it cost for an arbitration case to take it all the way, roughly?

Mr Platt: Roughly, about \$10,000.

Mr Christopherson: And you've got five a year, so that's \$50,000. That's one local alone. In order to pay for that, is it possible that you either have to reduce services to your members somewhere else or increase union dues, thereby giving them another tax that, thanks to the provincial government, they didn't have before?

Mr Platt: That is true.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 131, LOCAL 4200

The Vice-Chair: I would ask that a representative from the Canadian Union of Public Employees, Local 131, come forward, please. Good afternoon. For the sake of the panel and those of the public, would you please introduce yourselves.

Ms Marie Boyd: Just before I start, does everyone have a copy of our document?

The Vice-Chair: Yes, we do. Thank you.

Ms Boyd: Could you please turn to page 2, the third paragraph, section (a), the fifth word. Could you please change that word "the" to the word "her." On page 3 of the document, the fourth paragraph —

The Vice-Chair: Excuse me. Could I just ask for one point of clarification. On page 2, section (a), the fifth word? The first correction you just made, you said "Page 2, section (a)."

Ms Boyd: Yes.

The Vice-Chair: Could you read that line, please.

Ms Boyd: "On page 3 of her document" rather than "the."

The Vice-Chair: Thank you.

Ms Boyd: And then, on page 3 of our document, on the fourth paragraph, change the word "not" to "now."

The Vice-Chair: Could you please read the line, for a point of clarification. "Parties to a collective agreement will now..."

Ms Boyd: "Parties to a collective agreement will now be expected..."

The Vice-Chair: Thank you very much.

Ms Boyd: Good afternoon, everyone. My name is Marie Boyd. I am president of CUPE Local 131, which consists of three different workplaces: Anson House Home for the Aged, Fairhaven Home for Senior Citizens and Empress Gardens Retirement Residence, in Peterborough. I am also president of the Kawartha-Haliburton CUPE Council.

Sitting to the right of me is president of CUPE Local 4200, Mr Bert Rollings. Mr Rollings represents the employees at the Peterborough County Board of Education. He is also the regional vice-president of the Kawartha-Haliburton CUPE Council. Together we represent more than 800 members.

Mr Bert Rollings: It seems that since the Tory government was elected in Ontario all legislation presented thus far has had a negative impact on the working class. This bill appears to have the same effect. The Employment Standards Act was originally introduced to set a minimum responsible standard for the working-class people. Removing the flexibility from the Employment Standards Act for the employees, we revisit some of the same pain felt by the same caring working-class people who visited Peterborough on June 24, 1996. The idea of simplifying legislation to the point where it limits labour to get results is not responsible. If in fact we are worried about the tax base, we should be looking at other options, such as a fair taxation base for the million-dollar corporations rather than on the backs of the working class.

At this time we would like to address some concerns that we have with the statement from the Hon Elizabeth Witmer to the legislative standing committee on resources development on August 19, 1996.

Ms Boyd: Some of the changes proposed and the possible impact under Bill 49 are as follows:

(a) On page 3 of her document, it refers to a six-month limitation to file complaints. If the complainant is not satisfied with the outcome, then they are forced to go to court. Does Ms Witmer not understand that the average working-class person cannot afford court costs?

(b) Page 4 of the document refers to an employee who may have tried to address their claim through the ministry and the courts at the same time. The options are now reduced, therefore limiting employees' flexibility to not more than one avenue.

1600

Mr Rollings: The employment standards officers will now have the power to mediate and resolve complaints. We question whether — is everyone listening to me here? We put a lot of work into this and it doesn't seem like we have your attention, some of you.

Mr Tascona: We're listening. We're reading your document.

Mr Rollings: I see people looking at their watches and looking at other things. It's very distasteful.

The Acting Chair (Mr Ted Chudleigh): Could you please proceed with your presentation.

Mr Rollings: We question whether the decision is binding and if there is an appeal process. The bill appears to be silent on that issue.

The time period in which claimants can appeal decisions has been lengthened from 15 days to 45 days. We see this as a positive move.

On page 5 of the document, it refers to an employment standards officer having the right to refuse to issue an order. Are there other avenues that employees have if the employment standards officer refuses to issue an order? If the only other option is court, then it is not a feasible option to most working class people because of the cost factor.

Bill 49 attempts to clarify an employee's rights under the pregnancy and parental leave provision. We agree with this clarification.

Ms Boyd: Parties to a collective agreement will now be expected to manage the resolution of all disputes in the workplace. The grievance mediation process is a process which is of great value to both the employer and employee. A grievance mediation officer can shed new light on a situation. Eliminating this process will be of great cost to both parties.

This bill also proposes to utilize private collection agencies to recover money owed to employees by employers. Again, this is a move by this government to privatize this province.

On page 6 of the document, it states that employees will now be able to file their complaints by fax. Let's be realistic: Most rank and file members do not have access to faxes or computers.

Mr Rollings: This document also speaks about provisions intended to increase the flexibility of unions and management to negotiate certain employment standards as part of their collective agreement. In actuality, this process would be a downgrading of the collective agreement, because Bill 49 is not an improvement to the existing act.

This concludes our presentation today. We wish to thank all the committee members for the opportunity to present our views. We hope our concerns will be taken seriously before this bill is passed.

Mr Lalonde: On page 1, removing the flexibility from the Employment Standards Act, what effect will this have when it comes down to negotiation for a collective agreement? Do you, in the future, have to follow the Employment Standards Act, and will it eliminate some of the negotiation that was taking place in the past?

Mr Rollings: Let's face it, everything that's used and all our documents go through the government, and they listen to that. If they limit it, they'll be looking for more concessions from our people. The bigger unions have no problem coping with some of the costs involved in that, but the problem is the people who don't have collective agreements and don't have unions. I think one of our responsibilities as unions is to protect those people as well.

Mr Lalonde: But the non-union ones will have difficulties?

Mr Rollings: That's right.

Mr Christopherson: Thank you for your presentation. I want to follow up on the idea of the flexibility, because I don't think we've had quite enough discussion today about it. We need to have some, because the government is bringing it back. It's a fight that's going to have to be fought.

It's been suggested in other communities that part of the concern is that this is the slippery slope. Anybody who's ever sat at a bargaining table understands what it's like to negotiate during concessionary times. The employer loads up the table with takeaways they want. Now they'll be able to put on the table, and in some cases force acceptance of, standards that are below the Employment Standards Act now, below the floor. In two stages, if you get into two rounds of concessionary bargaining, you could end up losing two pieces you thought you were trading off.

For instance, if you gave up hours of work in exchange for vacation in one round of negotiations, in the next round of negotiations they could put those very vacations back on the table; they're up for grabs. By the end of a decade, your collective agreement is virtually wiped out, particularly as Bill 7 and other things take effect and unions and their effectiveness are watered down, which seems to be the goal here. I've heard that in other communities. It's certainly something I'm very concerned about. What are your thoughts about that happening in this area, in the labour movement here?

Mr Rollings: Where I have a problem with it is that labour has been in our family for decades. It goes back a lot of generations. I see my grandfather years ago, 50 years at least. I still have some of the documentation and some of the memories. They fought hard and fast for things they thought were right.

This year I had the opportunity to work with someone I respect very much, by the name of Karen Haslam, the former cabinet minister. She said something to me that I'll never forget and maybe I'll share this with the rest of the group. It was, "Regardless if we can change it, or whatever's happening, let's do what's right." We forgot about doing what is right.

Labour makes up a great deal of this country. Let's treat them fairly. I heard the honourable John O'Toole say he's worried about the upper 4% of the \$10,000 money, the awards, that it only accounts for 4% or better. If it's right, then it's right. I'm sorry, but we have to be responsible. Thank you very much.

Mr O'Toole: Thank you for your presentation. Just commenting on a couple of things: You both represent well-organized and highly regarded unions in this province and in this country, so I take your presentation as being reflective of them. We've heard from them pretty well every place we've been.

What is your grievance process today, the time line? In your collective agreement, how long does an employee have the right to file a grievance after the violation?

Ms Boyd: In my collective agreement, it's 15 working days.

Mr O'Toole: Fifteen working days. Have you ever thought of extending that? We're talking six months. Really, there's a good point to be made on that six months. How about, in a bad employer situation, where you allow it to go on for two years, which gives the business more opportunity to exploit more people if they're a bad employer? It also allows the business perhaps to suck as much out of the local economy as it can and then leave town. The six-month provision, if you look at it in all honesty, brings the issue to the fore and to the public much quicker. In that respect, fewer people are violated. So there is a positive. If you look at it expeditiously, it does really force the issue to the front sooner than it was buried now for two years. Most provinces have six months or a year. Most claims are in the first six months. It's honest and I think it will work. Thank you for your presentation.

The Acting Chair: We thank the Canadian Union of Public Employees, Local 131, for your presentation today.

1610

LINDSAY AND DISTRICT LABOUR COUNCIL

The Acting Chair: The Lindsay and District Labour Council, Mr Rick Denyer.

Mr Rick Denyer: My name's Rick Denyer. I'm the president of the Lindsay and District Labour Council. My partner is David St Jean, chairperson of CAW 2225.

Mr David St Jean: Good afternoon and thank you for the opportunity to bring to your attention the grave concerns felt by the members of the Lindsay and District Labour Council about Bill 49. We believe this bill will have enormous negative ramifications for workers across Ontario. The effects of the proposed changes have been presented to you by our colleagues at the Ontario Federation of Labour, and it is our intention to avoid redundancy while wholeheartedly endorsing that brief. It is our intention today to discuss with you the local problems which will arise from this legislation.

The members of the Lindsay and District Labour Council are charged by their membership with defending their legitimate interests. The passage of Bill 49 will make that job much more difficult. The provision to contract out of minimum standards will introduce a number of new issues to what is already a contentious bargaining environment.

In the last few years, organized workers in Lindsay and Victoria county have been beset by concessionary demands from employers in both the public and private sectors. As employers inevitably introduce new demands based on the new legislation, the relatively small locals in our area will be facing an uphill battle to protect the minimum standards our parents and grandparents gained.

The provisions of section 64.5 of the act, which require union members to exhaust grievance procedures, will increase costs to these same local unions. With the Employment Standards Act virtually deemed to be a part of every collective agreement, this change in the act effectively downloads the enforcement of the Employment Standards Act on to the employees' union through the grievance procedure. A previously expeditious and

effective investigation procedure, when applied through the government's Ministry of Labour, will now become a prolonged and needlessly contentious battle.

Perhaps surprisingly, the members of our unions we have spoken to are less concerned about these provisions of Bill 49 and their effects on themselves as organized workers than they are about the other provisions which will impact more directly on unorganized labour. It is interesting to note that this attack on labour standards is viewed by our members as not just an attack upon themselves, but as a bully-boy tactic aimed at workers in our community who do not enjoy the benefits of unionization.

High levels of unemployment have increased the ability of unscrupulous employers to take advantage of those in our community. The president of our labour council, Rick Denyer, will elaborate on some of the conditions which presently exist.

Mr Denyer: I have a couple of examples for you today. In one establishment alone, the unorganized are expected to come in and work for free for the first couple of days, for training. Even if they've worked there five years previously, they're expected to come back again and work free for training, and only earn their tips, as with the other bar we've talked about. Also, you're supposed to start your shift at 7 o'clock, and if it's not busy you wait until it gets busy, and then you start being paid for your shift then.

In another case I have as an example, the workers were paid in cash. They had no holiday pay, they received no WCB, no unemployment insurance, no overtime, no statutory holiday pay. When they asked their employer about their rights with the Employment Standards Act, they were all fired. Under Bill 49 they would have to pursue the employer through civil court. These workers have no time, no money; they just want to earn a living. To follow up on these kind of actions, an employer would still continue with the same practice as he has in the past.

Mr St Jean: Under the present proposals of Bill 49 it will become even more difficult for the unorganized in Victoria county to defend themselves and successfully pursue remedy from these employers. The use of private collectors, limited period changes and the necessity of proceeding through civil actions against the employer who is in contravention of the act will increase immeasurably the cost and time necessary to obtain just remedy for many workers. These proposals, initially presented as housekeeping measures, will have a catastrophic effect in our workplaces and our communities.

Those of us involved in organized labour are not surprised by its intent or tone. We are used to this government's attacks and know that our struggle against its ideological agenda is just beginning. We know this legislation is flawed in its stated aims, we know it will raise the level of labour unrest in our community, but we will take on the fight to preserve the gains we have won in the past. We are outraged by this attack on our hard-won union position in the workplaces of Ontario.

However, our greatest anger is over the government's betrayal of those who have no union to protect them. The proposals of Bill 49 are an abdication of the govern-

ment's responsibility to protect the unorganized from the excesses of the owners of capital. These amendments to the ESA will further marginalize those in low-paying part-time employment. We take this opportunity on behalf of all the workers in Victoria county to demand that the Conservative government abandon its attacks on the workers of Ontario. Thank you very much.

The Acting Chair: Thank you. That leaves us with about four and a half minutes for each caucus, being only two caucuses, and we start with the NDP.

Mr Christopherson: Thank you for your presentation. A number of things came to mind as I listened to your comments. The first one is that I think it should be officially on the record that the labour movement be given its recognized credit for playing the leadership role that you are in defending the rights of the unorganized. Many people who oppose the concepts of unionism or unions being an effective part of our society try to paint them as a special-interest group, that they're only concerned about the dues-paying member. It's labour leaders like we've had here today who have dispelled that and have shown that you're there for the rights of working people, not just those who pay dues, and that that's the main thing you care about.

I want to ask you if you think there's any chance, given the comments of the minister — I'm not going to go through it because the time goes too quick. But the minister alluded in a scrum — the government's heard me quote the document often enough; they know it's there — that there's a chance that some type of flexible standards might occur in non-unionized shops, which might in my mind suggest the idea of some form of collective action other than certified, bona fide unions as we have now. Is that something that concerns you as much as the idea of concessionary bargaining where there are collective agreements? The employee associations that pretend they are unions but really are run by employers — that's the sort of thing that comes to my mind. What are your thoughts on that?

Mr St Jean: I think if unorganized workers who are not members of, as you say, bona fide unions are asked to negotiate with their employers on labour standards, pretty much they're dead meat on a hook. As Rick pointed out, there are a number of instances of employers taking advantage of employees in Victoria county. These cause us great concern, but they're also indicative of the desperation of many employees to find decent-paying work. We have a local grocery store in our town where people have been going in and offering to work a month for free for a recommendation rather than a steady job because they're so desperate for work. Those people are desperate enough that they'll go right down to the bottom floor on any kind of negotiation over any labour standards, wages, you name it.

Mr Christopherson: It's something, I would suggest, to keep an eye on, because either the minister didn't know what she was talking about — and I give her the benefit of the doubt and say that can't be the case. Then there is something there to be very, very frightened of in terms of what the future for unorganized workers holds in terms of the ability to go below employment standards if they start walking down that road.

The other thing I want to come back to, and I'm going to keep coming back constantly until the government either admits or successfully refutes, and they haven't done either, is that the six-month limitation from two years takes away a right from an employee who right now is too afraid to file while they're working, because 90% of all claims are made after people leave work, and that without the two years they either give up the money or just continue to stay in a sweatshop situation that's untenable to most of us.

1620

You've given a few examples. Is that all there is? One of the members has said: "Show me how many. Tell me the examples." Is that all there are, just two or three, or are you concerned that there is much more than that — certainly any amount would be unacceptable, but that there's even more than you've got? Or have you really had to bend over backwards to find one or two here?

Mr Denyer: Myself, I can even go to a unionized place where their part-time employees don't get paid for paid holidays. And you can look further. It's all over the county, the workers being taken advantage of. But the hard part to accept is, in unionized workplaces, part-time people not being paid for paid holidays. That's really hard to swallow.

Mr Ouellette: Thanks very much for your presentation. I'd like to follow up on that unionized workplace with part-time employees. Are they not unionized employees as well?

Mr Denyer: Yes, they are.

Mr Ouellette: I don't understand how your organization wouldn't represent them or get that so that doesn't take place.

Mr Denyer: They've taken them to court many times, the union has, and more or less the company has fought to say that they don't have to be paid. There's a spot under the provision, and that is they have the right to refuse hours, so that spot declares that they don't have to pay for those —

Mr Ouellette: But you still represent the part-time people. I would think that in your bargaining agreement, you would negotiate for that.

Mr St Jean: There seems to be a general impression on the government side that when labour leaders — I'm with the CAW and I'm not talking about Buzz Hargrove. When we go to negotiate with our employer, my members are negotiating through me. There seems to be this misunderstanding on the part of the government that I go in to my employer and put what I want on the table and the employer says, "Oh, yes," and signs merrily on the dotted line. Under your government, as I said in the brief, it has become harder and harder for unionized workplaces to defend the legitimate interests of our members, and it's becoming impossible for anybody unorganized to defend any kind of interests of their own against employers who are increasingly emboldened and armed with the regressive legislation your government has provided them with to do nothing but beat on workers.

Mr Ouellette: I see the local unions as being a very strong representative. I can't see how that would take place, although I take your word for it that it does take place.

You mention about the workers going in and basically working for cash or working under the table. I would view that as working under the table. How, as a government, would we address that or get involved to address those issues?

Mr St Jean: I think one of the reasons employers do that is to get away from what the right wing has called payroll taxes. I think obviously we're going to have to have more enforcement. That's not what Bill 49 does. Bill 49 takes away enforcement. Bill 49 makes it harder to make sure employers live up to the laws in this country, even the weakened laws that your government has given us.

Mr Ouellette: I agree, but I think the employees who are willing to take on those and work under the table are the ones who should be taking some of the responsibility there too, and saying no.

Mr St Jean: If a worker has three kids at home, was just laid off his job, and his employer says, "I'm going to pay you cash," and that's the only opportunity that man has to put food on the table for his kids, he'll take it.

Mr Ouellette: If that employee came forward and said that this is unacceptable to the labour board and that employer was not allowed to pay cash, that wouldn't take place. Somebody has to take the step forward to stand up for what they believe in and not allow those things to happen. I realize that these things take place. I hear about them all the time in our riding. But I think we look at the situation and we have to make a judgement: Is this the way it's going to be, or do we want to change that?

Mr Denyer: I believe they did take a stand. They did step forward and they went to the government about it and they all lost their job because of it. They had to put up picket signs right in front of the restaurant telling them why.

Mr Ouellette: But if somebody had taken a stand before them, they wouldn't be in that position now. The people after them are probably not in that same situation.

Mr St Jean: If employers weren't put in the position where they had incredible power over unorganized employees, it wouldn't have happened either. All this bill does is give that power to the employers. The employers are the ones who are dealing with the power here. They are the ones who have the jobs. And if you're expecting employees to fight battles — in any democratic system, your government has the responsibility to fight for those who are weaker in our society, and your government is not doing that. Indeed, your government is doing the opposite. Face the facts.

The Acting Chair: Thank you very much. We appreciate the Lindsay and District Labour Council coming before us today.

HASTINGS AND PRINCE EDWARD LEGAL SERVICES

The Acting Chair: The next group is the Service Employees International Union, Local 183, Mrs Laura McWaters. Oh, I'm sorry. I skipped one: Hastings and Prince Edward Legal Services, Mr David Little. My apologies, sir. I didn't mean to skip a lawyer.

Mr David Little: Thank you. Time goes fast enough here.

We are the local legal clinic offering poverty law services to our community. Our mandate is to work to improve legal rights and access to legal services for our poor people.

What have we learned in our practice? We have learned two simple realities: that low-income workers either tend not to know their rights or, if they do, they are powerless to enforce them. I've set out reasons why workers tend not to know their rights. I'm sure you've heard this comment before and I offer our own observations.

In terms of workers who know their rights are being violated and view those violations as a price to pay for the time being for keeping their jobs, this is realistic for the reasons I've set out below. Retaliation, as you've heard, is a very real concern and takes many different forms. Commonly, it takes the form of being fired for a spurious reason. I've seen that many times. And workers know that an allegation of misconduct causes no end of problems with their employment insurance claims and causes problems with their welfare claims.

It's not a part of workers' experience that the no-retaliation provisions of the act are effective. Amazingly, the employment standards officer has no power to make an order of reinstatement or payment of wages. The only recourse for retaliation is by proceeding before a provincial judge in Criminal Court. The employment standards branch, to our knowledge, is not prosecuting these, the local crown attorneys don't have the resources, and the worker certainly can't do it himself. If somebody does prosecute, the burden is "beyond a reasonable doubt," which means that unless the employee is virtually given a letter saying, "We've retaliated against you," you'll never win the case, the consequence being that the retaliation provisions are simply ineffective.

Given these two workplace realities, I want to look at the six-month limitations in Bill 49. Currently a worker can make a claim for up to two years, which we have found to be quite reasonable. We've found that the worker needs this time, especially in small rural areas like this, to find out what his rights are and to find another job with a new employer who complies with the law.

Bill 49 would limit claims only to six months' wages. In our experience, there would be many cases in which workers have claims for overtime pay, minimum wage and holiday pay that must be taken to court because they exceed six months.

Is sending this to court an improvement? From the worker's point of view it's very unattractive compared to making a claim to the employment standards branch. The result, I would suggest, is that many workers will simply abandon their full claims and settle on the six-month claims that they can pursue through the branch. The reason is that there is inadequate access to justice. I've set out my observations on inadequate access to justice, and this I think has been acknowledged even by Minister Harnick. So from the worker's point of view it is very unattractive.

From the employer's point of view even, the prospect of claims going to court is not an improvement either. Employers would have to retain counsel or spend days sitting in Small Claims Court waiting for cases to be

heard and preparing them. If it goes to General Division, they have huge expenses. When the case finally is heard, it may be heard by a Small Claims Court judge who by his or her own admission does not have expertise in reading payroll records, does not have expertise in statutory entitlement. The result may very well be, even from the employer's point of view, inconsistent and unacceptable results.

From the province's point of view, sending cases to court is not going to be an improvement either. Indeed, the irony of removing disputes to court is striking because in virtually all areas of public law, labour relations etc, and perhaps now even in landlord and tenant, the province has realized that it's more cost-effective to set up administrative bodies than it is to overburden courts with these types of claims. The reality is that sending claims for more than six months' back pay to court is unattractive to workers, unattractive to employers, and unattractive to the province for these reasons.

Who then gains by the six-month provisions in Bill 49? I would suggest that Bill 49 is an improvement only from the point of view of employers who violate basic rights and then get away with it because of the workers' inadequate access to justice. To say that Bill 49 is an improvement, though, the employer must say something rather twisted. He must say: "We may violate basic minimum employment laws, and if we do, we think we should only have six months to be held to account, even though Revenue Canada, UIC and CPP hold us to account for six years, and workers' compensation virtually forever. If we decide to pay at all, we want to be able to strike a deal for less, thereby vindicating our decision in the first place to violate our workers' rights."

1630

Consider this example which I have modified from my practice to show my point. It's a case of two tire mechanics who worked overtime, one for Good Tire Service and one for Shady Tire Service. This has been modified to protect both the innocent and the guilty. But in each case, the mechanic worked overtime for an average of eight hours a week for the past two years, and their regular pay was \$12 an hour. Now, Good Tire Service pays overtime to the employee of \$6 an hour, the overtime premium times eight hours times 104 weeks, and has spent \$5,000 in overtime costs. Shady Tire Service doesn't pay overtime premium and pays zero. Under Bill 49, the amount of overtime that Shady Tire would pay, if the complaint is filed one month after the employment ends, is \$6 an hour times eight hours a week times five months, 21.5, an administrative charge, for a total of \$1,135. The result is that there's a net benefit to Shady Tire Service, by failing to pay overtime, of \$3,900. This is no improvement from the point of view of Good Tire Service, which, like most employers in this province, wants to abide by the law. In fact, Bill 49 creates a less-than-level playing field, to the benefit of employers who violate the law.

The second aspect I want to talk about is that Bill 49 proposes to take away a worker's current right to pursue termination pay for an employer required under the act and still sue for wrongful dismissal damages, which are

usually higher. I suggest that there is a fundamental flaw here, the result being again unfair to workers and again being a benefit to violating employers and a penalty to good employers.

Going back to my Good Tire Service example, in both cases we'll assume that these workers get terminated after three years. Good Tire Service, being law-abiding, pays termination pay, \$1,440, within two weeks, as required by subsection 7(5). Being law-abiding, they still leave themselves open to a court action for wrongful dismissal, which is a liability for possibly three months' wages, perhaps \$4,800. Shady Tire Service does not pay termination pay and is rewarded for doing so by Bill 49. This is because Bill 49 allows the employer to put the employee in a real bind. Either the tire mechanic goes after termination pay under the act or sues for wrongful dismissal but can't do both.

Now, for reasons that I've noted earlier, the employees are going to file for termination pay and give up the right for a wrongful dismissal suit. So I fear, and I think you should understand this, that a crack lawyer may very well advise his client, "Look, if you pay termination pay to this person, they can turn around and sue you, but if you don't pay it, you may have to pay a 10% surcharge, but that will be gained by the chance of foreclosing the employee's right to sue." It simply is an unacceptable conclusion from the point of view of the worker. Again even on the employer's side, the level playing field that currently exists is tilted in favour of abusive employers by Bill 49.

If the act were to be true to its name of being an improvement to both workers and honest employers, there are several initiatives that I think would be called for: first, a series of spot-checks and audits that I'm sure other people have spoken about. Secondly, the act could be amended to receive complaints from an agent of a worker. You could receive third-party complaints. Enforcement could be on an abuser-pay model, with penalties for enforcement that reflect the cost of enforcement, such as, for example, in workers' compensation where there are huge penalties for non-compliance with the act.

The no-retaliation remedy has to be taken out of the provincial court (criminal side) and put into the employment standards branch process on a fast-track basis, the way it is, for example, in labour relations.

In conclusion, I've focused only on two parts of the bill because of limited time and shown how they detract from, rather than improve, access to justice for vulnerable workers and do a disservice to honest employers. We suggest that other initiatives are likewise flawed and we respectfully request that this committee recommend that this bill be withdrawn.

I thank you for the opportunity of making this submission.

The Acting Chair: Thank you very much, Mr Little. We have two minutes per caucus.

Mr O'Toole: Thank you for your legal presentation. Sometimes I believe that the legal profession sometimes makes it more complicated than necessary. I'm going to point out to you one thing that I find flawed in your presentation. It may mean the whole presentation hinge

on this interpretation. If you've read this Bill 49, you'd be clear that your example in the overtime paid is wrong. This is absolutely, categorically wrong. This bill actually says that on a recurring violation, you're eligible to claim up to a year. So if you're using this as information to the people who come to your legal aid office, you, as a lawyer and a professional, are giving them wrong information. I'd hope you correct that, and if you have a problem, we'll talk about it right after the meeting.

Mr Little: I suggest, though, that this is not a recurring violation.

Mr O'Toole: On a recurring violation, you're eligible up to one year. So as a lawyer, you have a professional duty to your clients.

Mr Little: There is a real question about whether this would be considered to be a recurring violation.

Mr O'Toole: It's over time, it's recurring. It can be substantiated.

Mr Little: Even if it's one year, you still have a significant problem.

Mr O'Toole: The other comparison was 104 weeks, which is two years. So that information is wrong. It's 21.5 weeks you used. At any rate, I'm just clarifying it. When I look at that and I think of the interpretation you've given a couple of the clauses, my interpretation is contrary to yours. I believe that most of the provisions in this bill expedite justice more timely and more appropriately focus the resources of the ministry to actually collect the money that's owing. Twenty-five cents on the dollar now is being collected. Is that a system that's working, in your opinion as a lawyer?

Mr Little: In my opinion, that's a system that reflects the resources that the government is putting into that.

Mr Christopherson: I want to take exactly the opposite approach and suggest to you that this is exactly the sort of example that the public needs to see, because this is exactly the sort of thing that's going to happen out there. In order for Mr O'Toole's premise to be correct, it would have to be interpreted that there was a recurrence and that it was deemed to be that way. There's no guarantee that's going to happen, because lawyers get battling things; anything can happen. Even if it were — and I'm not sure that it would — you've still got one year to account for, which is rights that have been taken away.

So I want to thank you and ask you whether or not you think that this kind of circumstance is one that will increase, because right now we're dealing with circumstances that exist. But with your experience, do you think it's likely that even those who can't hire the sharpie lawyer at first to get that advice, over a period of time, that will work its way through the business community and they'll all learn what the tricks of the trade are, and that there's so many loopholes in here for employers that we'll see more of this sort of thing?

Mr Little: I think that's correct. That certainly corresponds to the experience at the legal clinic: There is more and more of this happening, and it becomes graver and graver as it happens. There's no question about that.

Mr Christopherson: I want to focus just a bit too, if I have the time, on — you talk about what people fear in terms of retaliation. I thought it was very useful for you

to talk about the range of retaliation; that it's not just the extreme, which is to fire someone outright and leave yourself open to that charge, but, as you note, you can change the work schedule, you can change employment duties. The atmosphere itself can be made poisonous, and then you can just lay the person off.

Unless you've worked in a small shop and not had any power and not had any union, it's probably hard to understand what it means to have somebody just mess around with the kind of job you're doing because they're ticked off at you that day. There's good jobs and bad jobs in every shop and they can change a lot of your hours. Even within the laws, they can do favours for those they like and go after those they don't like. Is that an accurate reflection of what you see?

Mr Little: Yes, and this retaliation is notoriously impossible to ever prove. In my opinion, there is just no remedy for that.

The Acting Chair: Thank you very much, Mr Little. Thank you for taking the time to appear before us today. We appreciate it very much.

1640

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183

The Acting Chair: Now we move to the Service Employees International Union, Local 183, Laura McWaters. Welcome to the committee, Ms McWaters. We have 15 minutes. If you'd like to start with the presentation, we could finish off with questions.

Ms Laura McWaters: I've already handed in a presentation of my brief. What I will be doing is going over the cover page and a couple of excerpts through the brief, then making some comments based on a lot of what I've experienced and heard today.

We wish to present the following brief in regard to the proposed changes to the Employment Standards Act. We also wish to highlight, as part of this submission, the need for the employment standards inspectors to have the authority to lay charges against negligent employers without the employees having to make a complaint first. This is for two reasons:

First, the employees are often intimidated about making complaints against their employers, as they are afraid of the repercussions. Secondly, some employees do not even realize that the law is being broken. We believe that making any changes to the standards as they are now, unless they improve what is there and not take away from it, will only hurt employees.

If you would turn to page 2, Service Employees International Union regards these changes as bringing more benefits to the employer while stripping workers of their existing minimal rights. SEIU questions the objective behind the government's amendments to the Employment Standards Act that are outlined in Bill 49. Is it not the intent of the Employment Standards Act to provide workers with a minimum standard by which workers could define their rights in the workplace? Were not the existing provisions in the Employment Standards Act regarded by employees and employers alike as a minimal floor whereby anything inferior was not only illegal but downright shameful?

On page 3, if Bill 49 is passed, these changes to the Employment Standards Act will see to further unrest in the province of Ontario. Service Employees International Union anticipates that this legislation will fuel a fury among a vast group of vulnerable workers throughout the province. This group includes women, visible minorities, health care workers, foodservice workers, cleaners and home workers. Most SEIU workers fall into one or more of these listed categories.

On page 4, SEIU opposition to Bill 49 is further accentuated when considering that our health care workers are not in a position to strike. If perchance disputes arise between a bargaining unit and an employer during negotiations at the renewal of a collective agreement, the parties may only resort to interest arbitration in an attempt to settle any disagreements. The union foresees enormous conflicts arising between the two parties and subsequent injustice directed at our members during negotiations. Undoubtedly in these instances, the parties proceed to interest arbitration in an attempt to resolve the contending issues. To our knowledge, Bill 49 does not provide any standard by which arbitrators may follow as a measure in assessing an equivalent, in not superior, package than what is provided in the Employment Standards Act. Thus, our members are at the mercy of an arbitrator's own assessment of a "comparable or better package."

On page 9, bottom of the page, the amendments introduce in section 21 of the bill, subsection 65(1) of the act, a new statutory maximum amount that an employee may recover by filing a complaint under the act, this maximum of \$10,000 would appear to apply to amounts owing of back wages and other moneys such as vacation, severance and termination pay. There are only a few exceptions, such as for orders awarding wages in respect of violation of the pregnancy and parental leave provisions and unlawful reprisals under the act.

The problem with implementing such a cap is that workers are often owed more than \$10,000, even in the most poorly paid sectors of the workforce, such as health care workers and food services. Indeed, workers who have been deprived of wages for a lengthy period of time are the very employees who will not have the means to hire a lawyer and wait the several years it will take before their case is settled. In effect, therefore, this provision will encourage the worst employers to violate the most basic standards while at the same time compounding the problems for those workers with meagre resources.

On page 11, a fundamental problem with regard to the act has for some time now been the failure to enforce standards. This is no less true with regard to collections. The most frequent reason for the ministry failure to collect wages assessed against employers has been the employer's refusal to pay. The answer to this problem, according to the proposed amendments, is not to start enforcing the act, but rather to absolve the government of the responsibility to enforce the act by farming out the problem to a collection agency.

On page 14, in conclusion, SEIU finds that once again the Harris government is victimizing Ontario's most vulnerable citizens in an attempt to cater to the wealthy.

The Ministry of Labour will be downsized and rid of its current public services. Thus, according to sources, approximately \$10 million will be salvaged from the Ontario budget that will in turn be issued as a tax break that benefits the wealthy. The increased demands on trade unions posed by Bill 49 are coming at the same time that labour relations in the province have taken on a decidedly anti-union tone, with the challenges posed by Bill 7 in terms of acquiring and maintaining bargaining rights and with the limits on unions' powers to bargain effectively through the combination of bargaining units.

In an attempt to avoid further unrest and conflict for a large majority of Ontario citizens, we encourage that Bill 49 be reconsidered and structured in such a manner that the legislation will achieve a fair balance between employees, unions and employers.

I am the health and safety and WCB coordinator for my office. I work two part-time jobs. I'm also a nurse at a local hospital, and I've been there for 20 years. I also happen to be the president of the Quinte Labour Council.

Both through my union office and through the labour council office, as of approximately December of last year the complaints and concerns that have come in have quadrupled, or even more, of unorganized workers, for the most part, who have no one to turn to for help. They can't afford legal help; they don't have a union in their workplace. They have no one to turn to for help when they have problems with the employer.

One of the most common complaints that I have been getting since that time — and we have been getting about 45 calls a day on this, whereas we used to get one to two calls a week — is that the employers have been hiring employees to work eight hours a day and making them work twelve, the last four hours worked without pay. They're being told, "You either work the eight hours and the last four without pay or you can find yourself another job."

People have to put food on the table; they have children to support; they have bills to pay. Unfortunately, it seems that the government has a problem understanding and grappling with the concept that there are employers out there doing these things. There are some good employers out there. However, more and more, we have been finding that the employers have become quite bold over the last few months just to see how far they can push things and what they can get away with.

For the most part, people are afraid to complain. We've heard that all day today. They are also having a hard time understanding the fear that these people face because if they do complain or challenge their employer, we have had case after case where they have been fired. They have been helped as much as we can, if they're unorganized workers, by being sent to the Ontario Labour Relations Board, the Ministry of Labour and the local legal services.

People can't continue in their lives having to worry that if they are entitled to things under the law and they make a legitimate complaint or a legitimate challenge they're going to lose their jobs. Therefore, they're going to continue to work in horrible working conditions just to pay the bills.

I heard a comment this morning about frivolous trips to arbitrators. I highly doubt in the eight years that I've worked in my union office that there has ever been a frivolous trip to an arbitrator; not that we've experienced. In the union movement, we know exactly how much it costs to go to an arbitrator, and we don't consider anything frivolous. That has been granted to us under the law.

I've heard mentioned and asked many times of labour people sitting here during the day what is covered and what is not covered in their collective agreements. Before the questions are put to me, I will simply say that we have many clauses under our collective agreement that pertain to health and safety, WCB, the grievance procedures and everything else. However, they are only there because the government has allowed them to be there under legislation.

It's very sad to me that we are sitting here today having these hearings on legislation which should be given. Employers should be treating their employees fairly and justly. We shouldn't have to be sitting here having hearings, bargaining back or forth or debating the issue of morality in the workplace. We have had to legislate morality in the workplace. That's basically what it has boiled down to.

Most workers cannot afford a lawyer. The legal clinics are overflowing, and what you have is that workers who make more money than is allowed to be covered by the legal clinic but not enough to cover their cases on their own are left hanging in the middle somewhere with nowhere to go.

The employers' refusal to pay: It is amazing to me that the government wants to put this out to a private collection agency. Why is the government not able to collect on their money? That's their job.

1650

I'll give you an example. We have had two nursing homes in the last year where the employers literally left the country with the money from the nursing home, including the wages owed to our workers. In one nursing home they worked for three months without pay after the employer left, never mind before the employer left, and in another one for six months without pay while we were trying to sort out with the police and the courts what was going to happen, because the clients and residents had to be looked after. Do you know what we collected for these people? Seven cents on the dollar. After all the other bills were paid to the banks, those workers got seven cents on the dollars that were owed to them. That is appalling.

We point fingers at Third World countries about what their working conditions are like there. I'm telling you that's exactly where we're headed right here. We have no future for our children. The quality of work life and home life, which we have a right to — I think we need to start putting a face on these people that we're talking about. These are your next-door neighbours. These are your children. These are your co-workers. These are the people who live in your community, and you're talking about them in such an abstract sense, as if they were robots or something. If the quality of the home life and the quality of the workplace does not continue as it has been over the last couple of decades, we are going to

slide into a Third World way of life. I am not an economist, but I can figure out that if half the population is unemployed and the other half is making minimum wage, businesses will have no one to purchase their goods and services.

We have five local hospitals within the Quinte area. In the last two years, we are now going through our fourth round of layoffs. We have less than half the staff and half the beds that we had before. So the staffing levels have gone down; people are unemployed; the services have gone down.

Trenton was an industrial town. We have almost 23% unemployment in the Quinte area, which I believe is the highest in the province.

All of our plants have either closed down or downsized, from approximately 400 to 600 workers down to 25 to 50. A good majority of our people are now on welfare. They don't want to be on welfare. They want to get jobs. There are no jobs to be had in this area.

If you take a good look going through our fast food restaurants, you won't find teenagers working there any more. You're going to find people 40 to 50 to 60 years old working in those places because there are no other jobs to be had.

The hallmark of any society is how it treats its weakest members, and to sit here and debate on the morality of how people should be treated in their workplace with regard to fairness of working hours, pay and health and safety issues is appalling to me. It's something that shouldn't even have to be debated.

Posting the act: To say that it's going to cost money to post the act is — I can't even get past that. For the few pages that it's on, to have it posted in the workplace, it is negligible. To deny a worker the right of knowledge of their rights is very distressing to me.

I suppose that's probably where I will end my presentation, except to say that I certainly hope the Employment Standards Act is not going to be downgraded. If anything, it's going to have to be upgraded, because whether this government believes it or not, there are many, many workers out there, especially in this climate of low employment, who will do anything and everything it takes to put food on the table. To say that a worker should be reporting the employer for offering them cash under the table is wonderful. However, the worker still has to put food on the table, and whether you understand it or not, unless you've been in that position, how hungry people can get — just because this is Canada and it's the 1990s does not mean these things don't happen here. I think people have a hard time getting their head around that, because they do happen here.

The Acting Chair: You have used exactly 15 minutes for your presentation. Thank you very much.

KINGSTON COMMUNITY LEGAL CLINIC

The Acting Chair: The Kingston Community Legal Clinic, Mr John Ross Done. We have 15 minutes to spend together, if you'd like to start with the presentation. We can conclude with questions.

Mr John Ross Done: Good afternoon. Do all members have a copy of my paper? It looks something like this.

The Acting Chair: They will have shortly, yes.

Mr Done: Perhaps the most important thing I've learned listening to the other speakers is that when I ask to be scheduled to make a presentation, to make sure I do it at 10 o'clock in the morning, because it's hard to think of something that you haven't said by the time 4 o'clock or 5 o'clock rolls around.

What I'm going to be speaking about I've summarized on the first page. I'm going to be speaking about three perhaps now familiar issues. One is the effect of the limitation period for filing a claim to change from two years to six months within which the worker must file the claim. I'm going to be speaking about the limit of \$10,000 as the upper limit, the upper amount that the employment standards branch can order be repaid. Finally, I'm going to be speaking about removing the workers' right to sue in court for unpaid wages in circumstances where he or she has filed an Employment Standards Act claim.

Perhaps rather than simply repeating some of the concerns that some of the other speakers have raised, I would like to focus on how these changes affect my clientele. I, of course, work in a legal clinic. I'm a lawyer. I'm the director, and my job isn't entirely dissimilar from what David Little or Lois Cromarty does or the work that Melinda Rees carries out. Those people have already spoken to you, no doubt, about some of these same concerns.

However, among my clientele there is a concentration of people with mental disorders. We have a large psychiatric hospital in Kingston. Many of the people who are admitted remain in Kingston. They live and they work there to the extent that people with mental disorders can find jobs, and it's not easy.

We also have a significant immigrant population in Kingston. I'm privileged to have among my clients many people who are Spanish-speaking, Vietnamese and a number of new Canadians whose first language isn't English. Not only do these clients of mine often have language difficulties, but there are cultural barriers as well. Understanding the Canadian judicial system and how it works in Ontario is a formidable cultural barrier.

Against that background, I'd like to make a few comments about how the new limitation periods affect what I call vulnerable workers, these people with disabilities or people with language and cultural barriers.

First, the problem with imposing a six-month limitation, as opposed to the current two years that is now the law, is that for any money accumulating beforehand, the only recourse will be a civil proceeding. Members of the committee might say: "Well, our Small Claims Court system has changed. During the past few years its jurisdiction has increased to \$6,000. People don't need a lawyer to bring a Small Claims Court claim. The rules are relatively informal. People can fill out the form and get a relatively speedy trial."

That might be the case for those of us who are educated and articulate, but for someone who is Vietnamese and doesn't write English, for someone who's just finished his or her English-as-a-second-language class, the courts are a real barrier. Even in the Small Claims Court the rules of procedure can be somewhat daunting.

Some people have lawyers; some people don't. Often the other side has a lawyer, and that makes it even more important.

I suggest that people with mental disabilities, people with these barriers must have a lawyer. So what about legal aid? Traditionally, this province has had the best legal aid system in the world and legal aid provided those services. For people who needed a legal aid certificate to pursue an action against the employer, that was often available. In other situations sometimes they could turn to their legal clinic or their student legal aid society for assistance. Has that changed? It certainly has.

The number of legal aid certificates in this province is now drastically reduced. The Ontario legal aid plan does not issue legal aid certificates in matters involving employment. In those circumstances, one must either be able to hire a private lawyer or get legal services elsewhere, or they're out of luck.

In the city of Kingston, the only legal clinic, Kingston Community Legal Clinic, does not provide those services. Since the reductions in legal aid, we've had to look at all of the areas for which low-income immigrants and the people who typically come to us for service need legal services and we haven't been able to provide that service yet.

Essentially, what this change will mean is that for people seeking unpaid wages beyond the six months, if these are people who can't proceed themselves — such as people with these disabilities or language or cultural barriers; they can't afford a lawyer, most of them — they'll be out of luck.

1700

What about the matter of people not wanting to bring a claim within the six-month period because they don't wish to jeopardize their employment position? This situation is more acute among people who are new Canadians and people with disabilities. People with psychiatric disabilities are usually glad to have whatever job they can. Often it's the first job they've had. They certainly don't wish to jeopardize that by making a complaint. People from other cultures who are new Canadians often learn very quickly: "Don't complain about your job. If you do so, you might not have it."

People are fired for complaining, and I say that despite the fact that our current Employment Standards Act makes that an offence. However, there are limitations on the employment standards branch's authority to reinstate a worker who has been unjustly fired, and that's not something a civil court can do either. Absent a collective agreement for people who are unionized, this is a real fear people have. But more acutely, people often just don't know what their rights are during those six months.

I'm proud that at a legal clinic we often have the means to communicate with people who have traditionally been disfranchised from the legal system. I'm proud that what community legal clinics do is that often in the course of speaking to somebody about a landlord-and-tenant claim or a welfare problem we can convey information about other issues that are involved in their life, including workplace issues, but it's often not until somebody arrives at our doorstep for another matter, a power of attorney or a landlord-and-tenant matter, that we

get an opportunity to speak to them about this. For these people, the two-year period is quite important and I suggest that must be preserved.

What about the \$10,000 limit in the amount of money that the employment standards branch can order? I would make a few comments here. First, of course the same remarks that I made about access to justice apply to this, and in situations involving more than \$10,000 people can't proceed in Small Claims Court. The upper jurisdiction is \$6,000. Their choice will be limited to commencing a civil proceeding in the Ontario Court (General Division). In that court, the rules are quite daunting and that's regardless of whether you're disabled, whether you have a cultural barrier; they're complex. I suggest that, practically speaking, people cannot commence those proceedings without the assistance of a lawyer. Again, legal aid is no longer available for that purpose.

I'd like to focus on a change that's encompassed in section 19 of Bill 49. What section 19 says is that the worker must make a choice. You can proceed with a civil proceeding and sue your employer for unpaid wages, or you can proceed under the Employment Standards Act and go the route with the employment standards branch, but you can't do both. Currently, you can and it's not unusual for a worker to bring proceedings in both forums. Is that duplication? I suggest that it isn't and that there is good motivation for a worker to want to look to both forums for justice. As I'm sure you've heard, in every wrongful dismissal proceeding there are typically two issues: (1) Was the worker wrongfully dismissed; and (2) if so, what notice period should that person be entitled to? Because it's that notice period for which the worker will be paid.

Of course, litigating this matter, the question of whether they were wrongfully dismissed and the notice period, in a civil court proceeding is quite daunting and quite expensive. That's the sort of thing you typically need a lawyer for. The advantage about the employment standards branch is that it can do much of that for you. A lawyer is nice, but if you don't have a lawyer the branch will investigate it. It can prosecute it and it provides an adjudication forum for it that's quite consumer-friendly. The Employment Standards Act is access-to-justice legislation and it's against that background that all of these changes are measured.

What the worker can do is proceed before the employment standards branch, and if he or she succeeds and the adjudicator says, "You were wrongfully dismissed," then of course it will follow that he or she is entitled to the minimum pay and the minimum notice period under the act. Of course, at that point the act says that for a person who has worked for, let's say, one year, he or she is only entitled to one week, and it's quite modest thereafter. What workers have done in the past is they've succeeded before the employment standards officer and then they've said, "Now that I have that finding that I was wrongfully dismissed, I'm going to go to court because the court acts under the common law and the court has the authority to award me more than I got."

Some of my colleagues who practise employment law extensively say the rule of thumb is that for most workers you should get a month's notice for each year, whereas

under the Employment Standards Act it's more commonly one week a year. If after succeeding before the employment standards branch one only proceeds to court to get a longer notice period, that's not a complex issue. If one has a lawyer, that's good, but perhaps it's easier to prosecute even without a lawyer. Further, if there is a trial, it's much shorter; it's confined to one issue.

That's why I suggest that people should continue to have the right to proceed with both forums, because otherwise what it will mean is that for low-income workers, the sort of people who often use the employment standards branch, they'll only be permitted, practically, either to proceed in the employment standards branch for that minimum notice period or to try to find a lawyer somehow and go to court. That's not a good choice and it's not a choice that, practically speaking, some of the people who are better off in our society face.

I'll summarize. What's the Employment Standards Act all about? It's about protecting workers, and it's against that policy position that all of these changes are measured. I suggest that it's no coincidence that workers' groups, legal clinics and unions aren't coming here today and saying, "These changes are good." What they seem to be saying is the opposite. I suggest that this is the time for the committee to listen and to reconsider those changes. Those are my remarks.

1710

The Vice-Chair: Thank you. We have just over 30 seconds per caucus.

Mr Christopherson: Well, 30 seconds is not a long time. Let me say, first of all, that I appreciate some of the language you've used, and I wrote it down, that the idea of being able to go in two places is a worker seeking justice. We have high principles so far in this province and it would seem to me that shouldn't be something the government would be afraid of. You also coined this the "access to justice" legislation, which I thought was very well put. I want to ask you how you would respond, in the few seconds you'll have after I say it, to the government and others who would say to you that this is all just legalistic doublespeak coming from you and the fact is that workers aren't really losing anything. That's what the government's contending: Workers aren't losing anything. How do you respond?

Mr Done: What they lose is the difference between the notice period at common law and the Employment Standards Act legislated minimum periods. For somebody like myself, I'm privileged to have a middle-class job. If I am fired unjustly, I can go to court and I can afford to ask the court to give me the that I'm entitled to at common law. I can afford to go and get a lawyer. But the people I serve right now can't, and they'll be stuck with the minimum notice periods.

Mr Christopherson: Thanks for fighting for them.

Mr Baird: Thank you very much for your presentation. It's appreciated. I just have one comment in response to my colleague the member for Hamilton Centre. Particularly, he speaks of the high principles. I guess for too many workers, though, those high principles don't hit the pavement. After someone is educated to their rights, makes a complaint, it's deemed to have enough merit to conduct an investigation, an investigation

is conducted and an order is issued and appeal time has expired, after all that, we're only collecting 25 cents on the dollar. If I was a worker in this province, I don't know whether it would be worth all your while to go through all that process, when there's a 75% chance if I win every single stage I'm not going to get my money. We've got to translate those high principles into reality for working people in this province, because it's just not there today for too many.

Mr Done: My response is short: There are two themes in this province, that disadvantaged people often haven't had many rights and that our government has continually tried to improve those. I encourage this government: Look at the legislation critically. Try to improve it. This legislation isn't going to save a nickel; it's going to cost people by forcing them to go to court or forcing them to turn to social agencies to recover what would otherwise be theirs by legislation. Let's continue the positive theme of improving workers' rights.

Mr Lalonde: Do you think the fact that those who cannot afford to hire a lawyer — services from legal aid are not permissible in this case — do you feel the ministry should keep some of the enforcement officers in place to handle those cases for people who cannot afford a lawyer and also are not represented by the union?

Mr Done: Yes, I certainly do. What the enforcement branch often does is provide services that lawyers would otherwise do. Much of what I do in my office doesn't involve reading statutes; it involves investigating, speaking to people, finding out what happened and calling people who owe the money and saying, "Gee, honour your contract and do what you're supposed to do." It seems that the answer is to strengthen the enforcement branch.

Mr Lalonde: So you would agree that unorganized groups should be entitled to have an enforcement officer take over their cases?

Mr Done: I agree categorically.

The Vice-Chair: Thank you very much for your presentation.

ALAN WHYTE

The Vice-Chair: I would ask that Alan Whyte please come forward. Good afternoon, sir.

Mr Alan Whyte: Good afternoon, Madam Chairman, members of the committee. Thank you for fitting me into your busy schedule today. I am a local, meaning Belleville-based, employment labour lawyer acting exclusively on the management side. We were retained late on Friday by a group of local employers who wish their collective voice to be heard at this particular committee. Unfortunately, the date only came to our attention late in the day. I've only had time to prepare an outline of my submissions, as opposed to a full brief.

Our labour and employment practice is largely but not entirely composed of small and medium-sized employers; in other words, businesses that don't have human resources. As a consequence, I think what I can bring to the committee is the perspective of that employer group, small and medium-sized; that's the focus.

I have prepared the presentation on the basis of three main areas. As you can see from my outline, paragraphs

2, 3 and 4, I have some brief comments to make about provisions that are endorsed, I have some comments with respect to problems that I can see in the act as it's now drafted and I think there are some other areas in the current act that need to be addressed that aren't anywhere in Bill 49. Let me go through it quickly.

With respect to those items that are endorsed, section 18 of the act requires an employee to elect between the filing of an Employment Standards Act complaint and a civil action. I would suggest that from the employer perspective, especially that of the small employer, this is a step in the right direction. What we have seen in our practice in recent years is what lawyers anyway call a multiplicity of proceedings. You have one event, let's say it's a termination of employment, and from that come forth two or three legal proceedings, all aimed at the same employer, all driving at the same thing, but all requiring different processing, additional cost and so on. Especially for the small and medium-sized employers, frankly, it's very difficult to deal with and we endorse the effort to focus the claim in whatever form it's going to be; the employee has to decide.

The next section is the one that indicates that unionized employees, in effect, must process their employment standards complaints through the union and through the grievance and arbitration processes in their collective agreement. Once again, for primarily the same reasons as I just gave you, we endorse this. I say that because we have seen over the years a multiplicity of proceedings. There's a grievance file; there's an Employment Standards Act complaint; if there's a human rights overtone to the matter there may be a human rights complaint. Once again the employer is hit on a number of fronts and the processing and costs and the risk and exposure are all over the place and are out of proportion to the problem. This is a beneficial change because it will focus the claim and have it dealt with.

The next area I'd like to comment on is the interplay of the collective agreement and the Employment Standards Act. That's dealt with in section 3 of the act. That is an area that is generally endorsed but somewhat problematic in application. It says that if certain provisions of the collective agreement prevail over the act, that is permissible as long as, when assessed together, the collective agreement exceeds the act.

Our employer clients have some concern about the proof of all that: How are you going to sort out what's superior, what's inferior and so on? I can see a lot of litigation, a lot of extra cost over that issue, and we think the government should go back to assessing it on an issue-by-issue basis; in other words, if holiday pay is the issue, then let's look at what the act says, let's look at what the collective agreement says and decide what is a superior benefit. The global approach, which I appreciate is designed to increase flexibility, is going to lead to some problems in practice.

Finally, the \$10,000 cap on wage recoveries, I've heard only some brief submissions on that today. My read of the act is that this section only deals with wages. It doesn't encompass termination pay, it doesn't encompass severance pay and other entitlements owed under the act; it's just a cap on wages. I don't think the critics of that

section need be too concerned, because in most situations the employees are going to realize that they're getting unpaid, if I can put it that way, well before the \$10,000 ceiling will be reached. I don't feel that will be much of a problem in application.

Moving on to the areas of Bill 49 that we see some problems in, section 24 echoes a current provision of the act, that employer who has received an order to pay must pay the full amount ordered to be paid under the order plus the administration cost, which is usually 10% or something in that range. I know of no other appellate system in the system of law in this province that requires the party who is appealing to pay up front and then get his appeal. It is fundamentally unfair and punitive, and I have seen it work in that fashion against small employers. If you're appealing, you feel that the order is wrong. You shouldn't have to comply with it first and argue about it later. It doesn't work that way in the general system of law. That should be changed.

1720

Moving on to limitation periods and recovery of money periods in section 32: My read of the situation is that the two-year limitation period which exists in the act right now, under Bill 49 as currently drafted, has been changed into something different. It's now a time frame that speaks to how the matter is going to be processed by the ministry. It's moved away from what it was originally, which is the time frame for an employee to file a complaint. There is value in that. Generally, in the system of law, limitation periods have value. They require things to be dealt with and brought forward within a reasonable time frame. My read of the situation is that the Bill 49 provisions have moved away from that. If the limitation period is going to be six months or one year, I don't make any comment about that. It should be made clear that this is the time frame applicable to an employee who has a complaint to file.

With respect to the recovery-of-money period — I won't take you through all the language — the effect of that as I read it is that the six months currently under consideration run from the filing of a formal complaint on the official piece of paper. I can tell you from my own practice that the worker will send a brief letter to the ministry, the ministry, because of the backlogs, doesn't get to it very quickly — a number of months, usually — then there may be an investigation, more months, and only then is a formal complaint initiated. I'm suggesting that whatever period is selected, be it six months or one year, the language of the act should say that the recovery is limited to the period of time, let's say six months, from the filing of a written complaint — not the official complaint, but the filing of the written complaint. That is what the intent should be.

Finally, there is in section 5 a proposed section that says, as I read it, that all moneys for termination, severance pay and everything else arising out of termination must be paid within seven days. I can tell you that for a small employer, in the case of a long-service employee being terminated, that is a very onerous, overly onerous task. As you know, the current operation of termination and severance pay can amount to a global entitlement of 34 weeks. Let's say you had someone who's earning

\$30,000. That 34-week payment required under the act comes out to just under \$20,000. I appreciate that this is a bit of an extreme example, but it's there to make the point that a hit of \$20,000 that may have been unexpected to the employer in a small business is excessive.

What I would suggest is that for small employers, and as we all know, employers with less than \$2.5-million payrolls are referred to in other parts of the act as being "small" employers, maybe that is the criterion that should be used. The employer should be able to pay out what is owed under the act over the course of the statutory notice period. That's the one- through eight-week sliding scale set out in section 57. That, for small and medium-sized employers, would be more fair and more appropriate.

Areas in the act that are not addressed at all: Section 32 is equal pay for equal work. We have no objection to the principle at all, we're simply saying that's redundant. We have a Pay Equity Act in this province which is very full and complete. It has enforcement mechanisms and is quite effective in relation to the idea of getting female wages up to male wages. That can be pulled. Section 32 should just be deleted completely.

Section 58.19 is a lengthy section that deals with a director's liability. I can tell you from personal experience that the director's liability provision is scaring off people who would otherwise be prepared to sit on, for example, boards of directors of community-based social service agencies. They are very concerned about their personal liabilities, which as you may know can be as extensive as six months' wages, 12 months of vacation pay and certain other provisions.

We suggest that the director's liability either be deleted completely or that it be scoped back significantly, because there is evidence that good people who would otherwise serve are being kept out.

In a lot of organizations, small, medium and large, it's unrealistic to expect directors to have all the information at hand so that they can prevent a default on wages or vacation pay. That isn't realistic. Directors don't have access to that day-to-day administration type of information. It's another reason to think hard about the directors' liability.

Section 64.2 talks about the meeting with the officer. All we're looking for there is an obligation on the part of the officer who's dealing with the complaint to give a copy of the complaint to the employer. That doesn't happen now. All that comes out is form letter that says, "Your former employee has filed a complaint for," then there's a blank and it might say "holiday pay" or "overtime." Usually you don't get any more particulars. If you're the employer, you don't get any more particulars. It's very difficult to deal with. If you had a copy of the complaint, you would be much better off in dealing with the matter and possibly resolving it at an early stage. Thank you.

Mr Tascona: Has it been your experience in collective agreements you deal with that there are provisions dealing with human rights and health and safety?

Mr Whyte: Yes. In both areas. Most collective agreements cover them, and what has happened since Bill —

Mr Tascona: Let me just ask you, since you respond to that: Why do you think unions want them in the collective agreement?

Mr Whyte: I think they may want the protection or access to the grievance and arbitration processes, and that is what has happened. Especially in the human rights area, issues which in the late 1980s would have gone to the Human Rights Commission have now come out through the grievance arbitration process which, at least in relation to the human rights process, is a lot speedier and more effective. I think that change is beneficial both ways.

Mr Lalonde: I need some clarification. Section 22, limitation period for the recovery of money: You mentioned that the claim should be from the filing of the written complaint.

Mr Whyte: Yes.

Mr Lalonde: This would mean that if an employee has filed a complaint, let's say two months after he has quit his job, there would be only four months for him to claim his overtime or additional statutory holidays?

Mr Whyte: No. In your example, if he filed the claim two months after being terminated or whatever it was, then I'm saying it should go back six months. As I read the act now, the six months operate from the filing of the formal claim which often, in my experience, comes after a lengthy investigation. The two years as it is now becomes much greater than two years in practice. I've seen examples of that where you end up dealing with cases that are three and four years old. I'm saying the six months, or whatever period of time is ultimately selected, should run from the filing of the first letter by the employee.

Mr Lalonde: Even if the filing was done a couple of weeks after he terminated his job?

Mr Whyte: Yes.

Mr Christopherson: It's really too bad there's such limited time, because you get into a fair bit of detail, and I wouldn't mind engaging you in some of that. I want to suggest something to you and ask your comment. One of the things you don't deal with is the new minimum threshold that workers would have to cross in terms of the money they're owed before the Ministry of Labour would kick in. The government is going to give itself the power to impose such a threshold. It won't tell us what that is.

For the sake of the argument — as you like to use extremes to make your point I'll do the same — if it's \$500 and a worker is owed \$80 — minimum-pay job, can't afford to take time off, can't afford to hire a lawyer — that worker effectively is probably going to lose the \$80. First of all, would you agree they're going to lose that \$80? Second, if you agree with that, would you agree there are therefore elements of this bill that take away workers' rights?

Mr Whyte: I agree the effect will be that the \$80 will go unpaid, as I understand the bill. I don't agree that this is necessarily taking away rights. I don't see anything in the act to say that the present interpretation of the Ministry of Labour, which is clearly pro-employee, is going to be altered. That is my experience in that the decision-making at the branch is pro-employee. I don't see anything to alter that. You don't find that in legislation; you find it in the day-to-day approach of the officers.

The Vice-Chair: Thank you very much, Mr Whyte, for coming forward today. Given that this ends presentations to the committee here in this city, I would like to adjourn with notice that we will commence tomorrow morning at 9 o'clock in committee room 1 in Toronto.

The committee adjourned at 1730.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Vice-Chair / Vice-Président: Mrs Barbara Fisher (Bruce PC)

*Mr John R. Baird (Nepean PC)

Mr Jack Carroll (Chatham-Kent PC)

*Mr David Christopherson (Hamilton Centre / -Centre ND)

*Mr Ted Chudleigh (Halton North / -Nord PC)

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*Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L)

Mr Bart Maves (Niagara Falls PC)

Mr Bill Murdoch (Grey-Owen Sound PC)

*Mr Jerry J. Ouellette (Oshawa PC)

*Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Jim Brown (Scarborough West / -Ouest PC) for Mr Maves

Mr John O'Toole (Durham East / -Est PC) for Mr Carroll

Mr E.J. Douglas Rollins (Quinte PC) for Mr Murdoch

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Avrum Fenson, research officer, Legislative Research Service

CONTENTS

Monday 9 September 1996

Employment Standards Improvement Act, 1996, Bill 49, <i>Mrs Witmer</i> / <i>Loi de 1996 sur l'amélioration des normes d'emploi</i>, projet de loi 49, <i>M^{me} Witmer</i>	R-1295
Belleville and District Chamber of Commerce	R-1295
Mr Greg Chambers	
Kingston and District Labour Council	R-1297
Mr Charlie Stock	
Canadian Auto Workers, Local 524	R-1299
Mr Ivan Mills	
Trenton and District Chamber of Commerce	R-1301
Mr Paul Tripp	
Ms Joan Kingston	
Northumberland Community Coalition	R-1303
Mr Ben Burd	
Peterborough and District Labour Council	R-1306
Mr Thomas Veitch	
Peterborough Community Legal Centre	R-1308
Ms Melinda Rees	
Northumberland Community Legal Centre	R-1311
Ms Lois Cromarty	
Quinte Labour Council	R-1313
Ms Barb Dolan	
B.W. Desjardins Books	R-1316
Mr Craig Desjardins	
OPSEU Kingston Area Council	R-1318
Mr Gavin Anderson	
Mr Doug Whitley	R-1320
Communications, Energy and Paperworkers Union of Canada, Local 534	R-1323
Ms Linda MacKenzie-Nicholas	
Building A Stronger Involved Community	R-1326
Mr Rob Hutchison	
Sisters of Providence of St Vincent de Paul	R-1328
Sister Pauline	
Kingston and District CUPE Council	R-1330
Mr John Platt	
Canadian Union of Public Employees, Local 131, Local 4200	R-1333
Ms Marie Boyd	
Mr Bert Rollings	
Lindsay and District Labour Council	R-1335
Mr Rick Denyer	
Mr David St Jean	
Hastings and Prince Edward Legal Services	R-1337
Mr David Little	
Service Employees International Union, Local 183	R-1339
Ms Laura McWaters	
Kingston Community Legal Clinic	R-1341
Mr John Ross Done	
Mr Alan Whyte	R-1344



R-30

R-30

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First Session, 36th Parliament

**Assemblée législative
de l'Ontario**

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**Official Report
of Debates
(Hansard)**

Tuesday 10 September 1996

**Journal
des débats
(Hansard)**

Mardi 10 septembre 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Tuesday 10 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mardi 10 septembre 1996

*The committee met at 0903 in committee room 1.*EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Vice-Chair (Mrs Barbara Fisher): Good morning. I would ask those present to take their seats if possible, please. We'd like to start. Welcome to the hearing process on Bill 49, An Act to improve the Employment Standards Act.

CANADIAN FEDERATION OF
INDEPENDENT BUSINESS

The Vice-Chair: Just so that we go through the procedure, there will be a 15-minute time allotment delegated to each of the participants or intervenors who come before the committee. That time will be used as you see fit, in a combination of presentation and question and answer or straight presentation, whatever you wish. Any time that is left at the end of the presentation time, up to the 15-minutes, will be allocated and distributed evenly between the three parties for a question and answer session. So welcome. I'd ask that you introduce yourself so that Hansard and the committee members and the public can know who you are.

Ms Judith Andrew: Good morning. I'm Judith Andrew. I'm the director of provincial policy with the Canadian Federation of Independent Business. I am to be joined by a colleague momentarily, and when that happens we'll introduce her. We appreciate the opportunity to present today on behalf of CFIB's 40,000 small and medium-sized business members in the province.

Our members are quite representative of the business population by size, age, sector, and rural and urban split, so our survey results are indeed a reliable gauge of the views of the small and medium-sized business sector. I mention this because we do indeed have some fresh survey results to bring to the government's and the committee's attention. They're appended at the back of our brief. They do pertain to the upcoming comprehensive review of the Employment Standards Act and have some bearing on Bill 49, so we enclose them today.

CFIB is pleased to make the presentation on Bill 49 today. We feel that this first stage of reform is very important and we support the government's plan to undertake a comprehensive review in the two-stage

overhaul. We are concerned that the ESA is a complicated piece of legislation which badly needs simplification and modernization.

I would like to quote from a 1987 report on just one piece of the legislation, and that was the Donner task force. I actually had the opportunity to serve on that task force so I remember this very clearly. The Donner task force observed that the structure of the legislation is so complicated that its totality is likely to be understood by only a few persons.

At the outset, we would note that the Employment Standards Act impacts smaller firms and their employees probably more than any other segment of Ontario society. Therefore, the small business perspective is of prime importance to policymakers. Large business representatives and their big labour counterparts are often quite vocal about the legislation, but the fact remains that the legislation has little, if any, relevance to the majority of these firms and their workers. A major exception to this rule would be the hours of work and overtime provisions. Accordingly, our submission will first deal with the amendments and then turn to the reasons why our members believe a more comprehensive review is necessary.

I've just been joined by our president, Catherine Swift.

Ms Catherine Swift: The late Catherine Swift. Excuse me.

Ms Andrew: On Bill 49, under the choice of procedure, CFIB is particularly supportive of the provisions contained in section 19 of the bill which are aimed at eliminating duplicate claims. We think it's reasonable to require employees to consider their options at the outset and decide whether they wish to file an employment standards claim or take the issue to court.

Smaller firms of course find that defending claims is more onerous because they have fewer resources to handle such matters. While large-firm executives can call up their legal department or call upon a major labour law firm for top-notch representation, small business owners don't have that luxury. They have to endure all the costs, delays and frustrations associated with these processes. We believe that tying up entrepreneurs' time in duplicative processes has the effect of diverting these business owners' time, attention, effort and money away from growing their firms and doing what they do so well, which is creating jobs.

On the limitation period, CFIB supports the proposal in Bill 49 to require the claimant to lodge his or her complaint within six months of the alleged violation. We believe it's reasonable and appropriate to make the employee responsible for lodging the claim on a timely basis so that the investigation can happen while the

evidence is still fresh. We also favour extending the time limit for appeals from 15 to 45 calendar days.

We support the government shifting the 4% of cases above \$10,000 to the courts, since these tend to involve higher-paid individuals and represent a disproportionate drain on government resources.

Under the area of pregnancy and parental leave, I think it's important that legislatures recognize that Ontario's comparatively generous provisions in this area have long since reached the limits of what smaller businesses can reasonably support, notwithstanding the fact that owner-managers are generally strong supporters of both family and community. Many small businesses will regard Bill 49's clarification in pregnancy and parental leave as an enhancement to an already generous arrangement.

This has to be understood against the backdrop of smaller firms having greater difficulty holding open positions for lengthy periods owing to the fact that such absences represent a significant proportion of their staff complement. When you think about it, one person on leave from a five-person staff represents a 20% void in that firm, and that's not easily filled. When you realize that 75% of all firms with paid employees have fewer than five staff members, the pregnancy and parental leave provisions do impact our sector dramatically. We're also concerned that the clarification in this area may have broader application than intended, and we would request that the government look into that aspect.

On collections, we believe the decision to contract out collection activities relative to moneys owed under the Employment Standards Act is an excellent example of the government concentrating on its core business while achieving better results more cost-effectively on an ancillary activity.

0910

Use of grievance procedures: We support the proposal to require employment standards complaints to be dealt with through an available grievance procedure in firms having a collective agreement. We also join with others who have expressed concerns before this committee that the section 20 powers of arbitrators and process for appealing arbitrators' decisions need to be clarified in Bill 49.

Under the issue of greater right or benefit as a package, we are aware that this has been drawn from the bill and that it will form part of the government's discussion paper leading to the second phase of the reform process, and we do encourage this process. But it was with some bemusement that we learned of labour disenchantment with this provision, as we would have thought that negotiating better packages and representing their members was unions' *raison d'être*.

From the small business perspective, owner-managers making arrangements with employees respecting working conditions has always been the way both parties obtain the necessary flexibility to function together. We take issue with any suggestion that employees who are not represented by a union watchdog are by definition "vulnerable workers." It's simply not true that an employer can dictate unattractive terms and conditions of employment because they always hold all the power. It may be true in some time-limited circumstances, but in the highly

competitive market with the volume of job changes that we have, it's virtually impossible for an employer to treat people badly and not suffer the consequences.

We believe the standards are too rigid in various areas and we feel it's important that consenting people can make arrangements that suit themselves on working conditions. A good example of this was brought forth in the Donner task force report. There were no *lieu* time provisions recognized by the act or the branch at that point despite the fact that there was widespread practice of *lieu* time going on, *lieu* time being where employee bank overtime for use at some later occasion.

We support the concept of permitting greater right to benefit as a package and we believe it should apply across the board and not just in unionized settings.

My colleague will now touch on the survey results that are appended.

Ms Swift: I just want to briefly touch on a survey that we did a couple of months ago in anticipation of the being a review of the Employment Standards Act. It presents some pretty interesting data, more so for the second phase, because these questions are sort of more general in terms of how small businesses deal with the Employment Standards Act. Some of the key findings I hope you'll look at with a little more time later. We'd get just under 5,000 responses, so it's a fairly decent sample of firms, small businesses of varying sizes.

One of the key findings was, for example, that just under 60% of the members surveyed did have problems with the legislation. Needless to say, that's the majority and it suggests that there are some changes that can helpfully be made here.

We found that about one third were concerned with the minimum standards themselves. About the same amount were concerned with the whole record-keeping issue which is always very important for small business lacking the resources, as Judith mentioned. Just under another third said the attitude of government officials dealing with the act, as well as their competence, was also something they had serious problems with. About 12% had concerns with the appeal system.

Some of the interesting tabulations, I guess, when you look at this from the standpoint that we would like the legislation to be a promoter of job creation, not discourager of job creation, and permanent full-time job creation, if possible: Although the numbers weren't huge we saw that, for example, just under 4% of the very smallest firms had workers on fixed-term contracts. I know there are a lot of reasons for that, some of which have been pretty logical business reasons, like before you're sure that a sales boost is going to be enduring and not just last for a short period of time and what not, you tend to hire people either part-time or on contract before you commit yourself. But there was no question that the stringent labour standards situation, which does make extremely difficult once an employee is hired full-time then downsize if economic conditions require it, was also a major motivator as to why smaller firms in particular, which naturally tend to be the younger, newer firms, were opting for the contract route.

We would leave these results with you for your further interest, we hope, and look forward to doing some more

analysis of them in anticipation of the second stage of review of the act.

Thank you. If there's time left for any questions, we'd be happy to try to answer them.

The Vice-Chair: Thank you. We do have a bit of time left. We have a minute and a half per caucus, starting with the official opposition.

Mr Pat Hoy (Essex-Kent): Good morning and thank you for your presentation. On page 3 you're talking about maximum claim amounts over \$10,000 tending to involve higher-paid individuals. I assume you mean they are paid more per hour or per month or whatever, but we've heard presentations from people who are on the very low side of the income scale who also have claims in excess of \$10,000. Maybe they've been victimized and were in a more vulnerable position for a greater length of time and it does exceed \$10,000. Do you have any comment on higher-paid individuals? Do you have any knowledge that many of the claims are from those who are paid, we'll say, at the higher income scale?

Ms Andrew: Just in discussions with the employment standards branch staff, the types of claims that would fall into that category tend to be things like executives who are pursuing \$100,000 claims and perhaps using employment standards branch as an alternative to discovery before they move on to a court battle. Also, there are concerns like commission sales, people who have large commissions, and there's some dispute over when it was to be paid and that sort of thing. So the branch is getting into that kind of thing rather than focusing on the types of claims that one would normally think the employment standards branch would deal with.

But I would comment on your suggestion that the vulnerable individuals who could accumulate that amount over a longer period of time — I do believe this provision would also work in conjunction with the limitation period and we think it's important that people raise their issues with the branch fairly promptly and not let a situation go on for several years and then make a large claim. That isn't serving the individual very well, it isn't serving the firm very well and it's better that these things are dealt with more immediately before the claim gets into that kind of high dollar figure.

Mr David Christopherson (Hamilton Centre): Thank you for your presentation. I wish we had more time. There's a great deal in your presentation that I'd like to talk to you about. However, I want to say at the outset that unfortunately there are many chambers and others who have felt that those of us who have concerns about this bill view all employers as bad employers, and that's not the case at all. This law is about the minimum standards and it's to deal with those bad bosses who do exist, and they are out there. As much as we all would like to think they aren't, they are.

When you comment on things like standing in the way of consenting adults making arrangements that suit themselves on working conditions and whether or not employers hold all the power in non-union situations, we only need look at the situation of the Screaming Tale where some were coerced, some were convinced that it was in their best interests to take on a job that didn't pay

anything. All their remuneration was in tips. Of course there was a province-wide outrage at that.

A question for you on the issue of limitation periods. There's been a lot of focus on the six months reducing from two years and the concern that people have is that 90% of all claims are made after people leave the employment of the bad boss and they need the two years to go back because they've been fearful of making a claim while they worked there, because of worry about recrimination.

This is going to have the effect, and we've seen it time and time again, of costing employees money they've already worked for, and I'd like to know how you would comment on that, recognizing that these people are going to lose money that right now under the law they would be allowed to recoup.

Ms Swift: There are just two sides to the issue naturally, although there will always be a handful of individuals in any group who will try to circumvent the system, and of course we're in the position of hearing from our members about the employees who abuse the standards in the Employment Standards Act and elsewhere to take unfair advantage of employers. Goodness knows, we have many, many large files and long lists of these kinds of situations happening, and of course the vast majority of our members have eight to 10 employees and usually are put through legal costs and what not that are pretty heavy duty for them. So I think there are certainly two sides to this issue as there are to just about every issue.

0920

I guess we see this two-year period, for example, leaving an inordinate amount of time. As Judith mentioned earlier also, it gets to the point that you don't necessarily even recall what happened if it stretches to a two-year point. We think to enforce, to educate, to promote the speedy resolution, six months should be enough. We've got enough hangups with our entire judicial system, let alone what happens under acts like these, and we see cases where employees come back in a sort of harassment way to employers because they're disgruntled ex-employees and there really is no case to be made.

Again, I think it's wise to just keep in mind that there are two sides to the situation and it's our members, given that they're small and typically lack a lot of money to throw at these things, who often are victimized.

Mr Christopherson: I hope you'll get a chance to see the Hansards and review some of the presentations we've had because some of them are quite frightening.

Ms Swift: We've seen them.

The Vice-Chair: Excuse me, Mr Christopherson. We've expired the time on the questions. As a matter of fact, we're well over time right now. We have one left to hear from, Mr Baird.

Mr John R. Baird (Nepean): Thank you very much for your presentation. I particularly appreciate the survey results of your provincial survey appended to the back. It's always good to see that some thought is going into it in terms of representing your members across the province.

The growth, and I guess continuing growth, of small and medium-sized business in the provincial economy

certainly points to the need for an overall review of this ESA, given that it was written in 1974 and the growing importance of small businesses certainly has got to be reflected in the act.

One issue we've been talking a lot about is right now we're only collecting 25 cents on the dollar. Once an order is issued after the investigation and appeal period, we're only collecting 25 cents on the dollar. From your experience with your members, do you think that the act would likely be strengthened and taken more seriously if that abysmal rate were dramatically increased through bringing in collection agents? Would people be more likely to respect the act if it was actually enforced?

Ms Andrew: We think our members do respect the act. Right now, we're analysing the massive pile of comments that we have received in connection with this survey. They do respect the act in terms of compliance with it, but they have concerns about how it impacts them on the collection front. Obviously if there's an improvement in collection, that's got to benefit the employee involved, and as well the employer who owes the money is going to realize he has to pay up.

Mr Baird: Particularly with respect to competition, if company A is accepting the role and company B doesn't. So thank you.

Ms Andrew: Yes.

The Vice-Chair: Thank you very much for coming forward this morning.

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO DIVISION

The Vice-Chair: I would ask representatives from CUPE, Ontario division, to come forward, please. Good morning, gentlemen. For the sake of Hansard and those present I would ask you to introduce yourselves, please.

Mr Nick Milanovic: My name's Nick Milanovic. I'm a lawyer for the Canadian Union of Public Employees.

Mr Brian O'Keefe: I'm Brian O'Keefe. I'm the secretary-treasurer of CUPE Ontario.

The Vice-Chair: Welcome.

Mr O'Keefe: The Ontario division of the Canadian Union of Public Employees welcomes this opportunity to make submissions to the standing committee on resources development.

CUPE is Canada's largest trade union representing more than 450,000 members. Our members do a variety of jobs from coast to coast. We are organized into more than 2,650 local unions and are situated in nearly every major city and town. CUPE locals range in size from half a dozen to more than 18,000 members.

The Ontario division of CUPE represents more than 180,000 members. Ontario division members are employed by boards of education, municipalities, hospitals, universities, nursing homes, homes for the aged, electrical utilities, voluntary social agencies, the Ontario Housing Corp and the Workers' Compensation Board.

Employment standards legislation is the most fundamental piece of labour legislation for working people in Ontario. It has set minimum standards that protect workers from exploitation by the province's worst employers. We believe that any amendments must improve the legislation.

The Minister of Labour says that the proposed changes in Bill 49, the Employment Standards Improvement Act, are housekeeping amendments to facilitate administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures.

Although the current Employment Standards Act is already a relatively weak piece of legislation, we maintain that the proposed amendments will diminish its minimum standards even more. Since the proposed amendments will let employers bargain for substandard working conditions, the Ontario division of CUPE is opposed to the key amendments. We see that the amendments will hamper the administration and enforcement of the act, increase uncertainty for those involved in a claim and complicate and limit its procedures. The amendments in fact will make employment standards legislation so ineffective for workers that employers will be able to legally circumvent basic employment standard guarantees.

The Ontario Federation of Labour's bad boss hotline has been flooded with calls from workers recently who are not being paid their wages, not being paid overtime, not being granted their vacation or statutory holidays, being forced to work too many consecutive days or beyond the legislated maximum of 48 hours a week. Other callers are complaining of harassment and firing without cause.

We have other concerns about the proposed amendments that we will not address here. The Ontario Federation of Labour's legislative brief speaks to these concerns, and the Ontario division of CUPE supports the OFL submissions.

A great majority of the proposed changes seek to limit even more the ability of workers to enforce their right under the law. The substance of what may be claimed has been limited under Bill 49 with the imposition of new minimum and maximum amounts that may be claimed. The government's proposal to prevent workers from collecting more than \$10,000 from delinquent employers, regardless of what they actually owe, is patently unfair.

Finally, the proposal to shorten the duration of acceptable claims reduces the total amount that may be recovered from law-breaking employers and all the changes will force many non-unionized complainants to abandon the Ministry of Labour's dispute resolution system and opt into the court system for resolution of their disputes. Many workers, however, will find it extremely difficult to enforce their rights in court, given the expense and time required for private litigation. As a result, workers will simply not be able to enforce the employment standards rights and have to abandon the claims.

At the same time, union members will be barred from launching a complaint under the investigatory and enforcement powers of the amendments. The changes mean that unions will face new financial and legal obligations that will make it difficult for them to enforce all of their members' employment standards complaints. Employers, on the other hand, will face fewer complaints.

Our second major concern is that of privatization. The act is an attempt to privatize two critical aspects of the legislation. First, the government wants to transfer the cost and responsibility of administering unionized amen-

ment complaints on to the shoulders of trade unions covered by a collective agreement. It wants to permit the workplace parties to contract out the provisions of the act. These changes will result in a loss of jobs and create a more difficult labour relations atmosphere.

Second, the government wants to transfer the collection of non-unionized employee claims to the private sector. This provision will lead to employers receiving smaller settlement packages. In turn, this will serve to weaken the force of existing employment standards for unorganized employees.

The Ministry of Labour is clearly attempting to rid itself of the cost and responsibility of enforcing the act. Channelling complaints into the court or grievance arbitration system may help the ministry to reduce its budget, but it won't improve employment standards for workers. The alteration to the collection system also helps the ministry eliminate the cost of funding the enforcement mechanisms of the act.

The government is clearly telling us that it has little interest in maintaining employment standards. The amendments also repeatedly differentiate between unionized and non-unionized workers. Workers who happen to be union members are treated differently from non-unionized members. The changes to all workers' rights based on union membership signals the end of the basic universal workplace rights workers in this province have enjoyed for the last 30 years. Union members won't have the same minimum standards extended to non-union employees, nor will union members have their rights enforced through the same procedures.

These changes have negative implications for the equality of enforcement of employment standards legislation in unionized and non-unionized workplaces.

0930

Finally, the elimination of a universal floor of rights for unionized workers, along with the numerous amendments limiting non-unionized employees from fully enforcing the law, shows the government's intention to erode employment standards in this province. Allowing employers with a bargaining agent to set workplace employment standards would only lead to an erosion of current standards. Employers will copy the lower workplace standards of their non-union counterparts or contracted services to private sector non-union workplaces. This trend to contract out and lower workplace standards for unionized employees is further aggravated by the government's new restrictions on non-unionized workers.

These changes will tempt unscrupulous employers to save money by abusing workers' rights under the act. Given the increased difficulty of enforcement for non-unionized workers, these employers will be enabled to disregard the substance of the law, and their unionized counterparts will be encouraged to go after workplace concessions or, alternatively, contract their work to unprincipled employers who do not respect the law. At the end of the day, the government's changes are detrimental to organized and unorganized workers throughout the province.

In the main, the legislation is no improvement for workers. It is a highly partisan, ideologically driven bill

that is designed to further shift the balance of power into the hands of the employers. It is a format that has been tried in other jurisdictions and has succeeded only in weakening the economies and lowering the standards of living.

In light of the changes that have taken place in our economy in recent years — the proliferation of small workplaces, the decline in the standard of living for working people in this province since the late 1970s, and the fact that 20% of jobs now are part-time jobs — we find it extremely disturbing that this government would try to dismantle the standards that have been built up in this province. In fact, it's the structure of our society which has been built up here since the Second World War. We see this as the dismantling of the welfare state. We're extremely disturbed by it. We see it as an outright attack on working people to try to shift the balance of power and wealth from those who have not to those who have. We're going to oppose this with everything we've got.

The Ontario division is vigorously opposed to the changes and requests the committee to seriously consider our submissions during the process of redrafting this legislation. Please do not hesitate to contact us if you or your staff have any questions you want us to address.

All of the above is respectfully submitted for your consideration.

The Vice-Chair: Thank you. We have four and half minutes remaining to the 15-minute mark. Mr Christopherson, would you start, please?

Mr Christopherson: Thank you very much for your presentation. I'd like to comment on the aspect of the ESA claims now being the responsibility of unions like yours as a result of Bill 49. It's been suggested by some of the government members that they're surprised. They thought that unions would want this responsibility for reasons I'll leave to them to explain. Our position has been that all this does is effectively download responsibilities out of the ministry on to unions, and in conjunction with weakening the standards, allows the government to lay off employment standards officers, which is the name of the game. We know that at least 45 are going to be gone as a result of this bill.

First of all, could you tell me how much it costs you on average for an arbitration case to deal with from the beginning to the end? Secondly, just overall comments on why this is not a responsibility that is good for you and in fact you see the government as downloading and dumping responsibility off their shoulders to yours.

Mr O'Keefe: I'm going to let Nick comment on the cost aspect of it, but this is definitely a cost cutting exercise. It's designed to do some cost cutting in the ministry. It's going to burden unions that are already overloaded. It's going to be a very, very big cost item for unions, so basically what this is doing is shifting the costs of looking after these cases from the ministry over to unions.

As I say, this is something we're not in a position to handle. We're already overloaded, but I'm going to let Nick comment on some more details.

Mr Milanovic: Let's take the easiest situation, a straightforward case, which may last between one or two

days and today that is often a rarity. If we were going to do an in-house, that is if someone in the legal department in CUPE were to do it, and the preparation for a case often lasts between three or four days of straight working time, CUPE would have to be out of pocket my wages, including a national representative responsible for the local and often the local president. We would spend that time preparing the case. We would have to hire an arbitrator whose costs would be split between the union and the employer. Arbitrator's costs run between approximately \$1,500 a day to \$3,000 a day. If we were to contract that out to a law firm, traditionally a lawyer would charge approximately \$2,000 a hearing day. All told, we're talking about between \$4,000 and \$6,000 for a simple case.

Mr Christopherson: Is this something you've asked for?

The Vice-Chair: Excuse me, Mr Christopherson, we're now a minute and a half beyond the allocated time.

Mr John O'Toole (Durham East): Thank you very much for your presentation this morning. There's seldom a day that goes by that I don't read the paper and read the names Sid Ryan and Gord Wilson, very popular, very powerful, very important people in the economy of Ontario and indeed Canada — a very large organization, 450,000 members, a formidable company you might say, if one was to interpret it that way.

You stated this morning, I guess on behalf of CUPE, that you didn't want to see any changes, technically, in the labour laws. Is that basically pretty generic?

Mr O'Keefe: That's not correct. The point I'm trying to make here: This is the very moment in our history where we should be extending employment standards because of the changes that are taking place in our economy. I mentioned the proliferation of the small workplaces, substandard jobs, the huge number of low-wage jobs in the service sector, and what's happening here is the dismantling of everything we've built up over the past 50 years.

Mr O'Toole: I think we've heard from Professor Judy Fudge and others, rather militant positions, but they would all acknowledge that the world of work itself is changing. In fact, for organization, you might say that world work is fragmenting with home work, smaller workplaces. Is this a difficulty in your organizational efforts?

Mr O'Keefe: It presents us with some problems, but the issue here is that the structures that are in our society, our public institutions, are being dismantled — the institutions that would protect these people.

Mr O'Toole: There's no reduction in the minimum standards.

The Vice-Chair: Excuse me, Mr O'Toole, time has expired.

Mr Jean-Marc Lalonde (Prescott and Russell): Thank you for your representation. I have a question. Let's say if one of your employees reports to the union rep in one of your shops and he finds out that he hasn't been paid vacation pay, overtime, stat holidays, and finally, your union rep tells him, "Well, the amount might be over \$10,000, but remember we just cannot collect over \$10,000, and also the fact that we have to go to

private collections." What type of reaction would you expect from your employee if you are telling him, "No, you're not entitled if you're more than \$10,000," and "No, you have to pay a certain amount of the amount of money that will be collected if it is over \$10,000"? Do you think the employees will be happy? Do you think the employees will say, "Well, you people are there to represent me, to collect my money that is owing to me."

Mr O'Keefe: When this happened, employees who are in that situation are going to be totally outraged. I think there's absolutely no justification whatsoever for the \$10,000 cap. If an employer owes money, they owe money. It's as simple as that. The fact that passing the collection of the money over to a collection agency I think is absolutely disgusting, and it's going to put a sort of pressure on vulnerable employees.

0940

Mr Lalonde: Do you think the employee's going to say, "Well, I've been paying union dues for you people to represent me and in this case, you cannot represent me properly"?

Mr O'Keefe: No, I think workers are pretty smart. I think they'll see it's the Harris government.

The Vice-Chair: Thank you very much for your presentation this morning.

COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

The Vice-Chair: I would ask the representatives of the Council of Ontario Construction Associations to come forward please.

While that is happening, I would like to just reiterate. I guess for the sake of the public who are here, so that everybody has an equal opportunity to present their case and to have the questions asked, I ask for cooperation not only from the members of the panel but perhaps the presenters as well. Where we are time restricted, we're now fully one behind. We were about six minutes late starting. We've lost nine minutes in two presentations. That may not seem like a lot, but if we keep on that pattern, some people won't be able to be heard today and I think that would be unfortunate. So for the sake of the present and panel members, I ask not to have to interrupt you. If there's only time for a short question, in the end, please use a short question time, and let me proceed.

Mr Christopherson: On a point of order, Madam Chair: Very briefly, I was going to say something yesterday and I let it go, not that one should play comparison games, but I thought that the previous Chair was serving us all well when he allowed, no matter how much time was over, unless it was extreme, at least people make a brief comment, even if it was 15 seconds, at maybe, certainly for myself, I wouldn't feel that I have to rush in to get everything in there, and presenters the same way. It worked well and we didn't do it all day yesterday, but I'm raising it early today for you to think about so that we don't have a situation where a presenter is faced with us making a comment and then they are shut down from even saying four words. I thought when Steve did that, it worked well.

The Vice-Chair: Mr Christopherson, I have yet to cut off an intervenor's response. In fairness to the Chair, I'm finding that all parties are abusing the lead-in time to the question. If there's a question to be asked, please ask it. I've never as yet cut off an intervenor's response, which I think is why we're here — to listen. But I do ask for everybody to please help us out in being fair to the others who have to follow, whose time will be restricted. I do appreciate your comments and I will continue to try and be fair, but I'm asking for everybody's indulgence in being fair to the presenters and letting them have the opportunity to answer a question.

Having said that, welcome to the table. I would ask for the sake of Hansard and those present that you introduce yourself.

Dr David Surplis: I'm David Surplis. I'm president of the Council of Ontario Construction Associations, which is known as COCA more often than the longer term. We're a federation of the major construction associations across the province, which you'll see on page 7 of our brief. Our members represent approximately 8,500 companies or employers, which in turn represent the vast majority of non-residential construction in Ontario. You've heard from some of our member organizations around the province, as you took your hearings on the road, but we're here now to give voice to our other member associations that we're able to be present at your other hearings.

Right off the top, I want to say that the members of COCA are very pleased that the minister has started the two-step process of changing the Employment Standards Act to reflect the realities of the modern workplace. The goals of Bill 49 to us are clearly more efficient and effective use of government resources, while protecting basic standards for employees.

One of the principal reasons that COCA supports Bill 49 is the fact that the non-residential construction industry has been severely depressed since 1989. From 1989 to 1995, we've lost over half of the business in Ontario, and you probably know that full well, looking around your ridings. Try some time, this next weekend, to look for some construction cranes. At one point, I offered to give members \$10 each for each construction crane they could find, with the proviso that you couldn't include public housing, which was then in force. So you get an idea how badly off we are. It's a huge part of the economy and we've been pounding this drum for some time. Our unemployment is still in double digits and some of our union halls are reporting more than 50% of their members still looking for work.

However, Bill 49 isn't about unemployment but it is about efficiency on the part of government, simplicity for the better understanding of employees and employers and effectiveness of enforcement regarding those who run afoul of the law, on either side. Of course, we view efficiency, simplicity and effectiveness as basic, necessary ingredients of any plan to enhance productivity, attract investors and improve the economy. To us, Bill 49 is not just housekeeping but it's also a signal that the government is intent on addressing the realities of the global marketplace, international competition and especially the changing nature of work in the workplace.

In fact, seeing Ron Saunders here earlier, I was reminded that many in the construction industry think the ministry's name should be changed as well to include some reference to the workplace, to portray a sense of balance. For years, people in the construction industry, or at least management, the employer side, have perceived 400 University Avenue as the Ministry of Organized Labour, and of course that's wrong.

As I mentioned in the beginning, Ontario's non-residential construction industry is very unhealthy. As you know, activity in our sector usually indicates the health of the economy as a whole, a bellwether effect, but unfortunately there's nothing going on. Yes, there are a few projects like Highway 407, the expansion of the convention centre, the trade centre and so on, but unfortunately, I have to remind you that \$1 million spent on industrial, commercial, institutional or civil construction only produces between 12 and 16 person-years of work. To put things in perspective, a construction project valued at \$100 million provides jobs for roughly 1,200 to 1,500 people, but we have over 50,000 skilled workers unemployed in Toronto alone, so we require huge amounts of investment to get our sector going again.

The changes proposed in Bill 49 will not directly address the economic depression afflicting our industry, that's clear, but they help, mainly by sending a signal. Construction is a derived demand and there is nothing that will help us so much as a healthy economy. The members of COCA are therefore in favour of all kinds of necessary changes, such as getting rid of redundant, confusing and job-killing regulations, as Mr Sheehan and others are looking into, and unloading activities and their costs currently undertaken by government which can be done as well or better, and I underline "as well or better," by the private sector. Of course, the obverse is true — if they're better done by government, leave them with government. That's all partly envisioned by Bill 49.

Another step we support is devolving some of the government activities and responsibilities on to the workplace parties themselves, which is also anticipated in Bill 49, but is much more forcefully demonstrated in Bill 54, the previous minister's legislation in Consumer and Commercial Relations. We believe strongly in the concept of delegated administrative organization such as obtained in Alberta, and the concept of rowing your own boat — responsibility for the industries sectorally.

Bill 49 holds promise of letting government attend to what it does best and leaving the sectors to do what they do best. By that, we don't mean unlimited powers for management with no consideration for workers. As you probably remember, certainly some of you remember, COCA was a strident opponent of Bill 40 in years gone by. The reason for that was, we saw it as killing the economy and discouraging investors. We thought there was nothing better for the financial and other health of workers than a healthy economy. That's the best thing. In fact, in a healthy economy, that's when unions do their best organizing and whatever as well.

So in a similar vein, we are supportive of Bill 49 because we believe it will give a positive message to investors that Ontario is a decent place to locate or

expand, with decent employment standards arrived at by expanded input from the workplace parties.

From where we speak in construction, we have a long history of sectoral advancement, with progressive action fully supported by both employees and employers. Look at our world-class apprenticeship programs here in Ontario, look at our construction safety association, look at some of the innovations we have in collective bargaining. All of these things work well because the entire industry, labour and management, make them work.

In other words, what I'm saying is that the construction industry can be used to demonstrate that one of the motivating ideas we perceive behind Employment Standards Act revisions, and that is self-reliance, is completely well-founded. That is why we will be taking a very active part in the second stage of this review after this bill is passed.

Another thing we simply have to mention with regard to Bill 49 is the fact that construction is different. I know you've heard it before but it bears repeating. Employment conditions in construction are very, very different from those in other industries. Weather alone requires different patterns of hiring, different standards of hours of work and overtime and so on, and the time-limited aspect of almost all construction jobs requires different standards for severance and so on. You know that and we're just reminding you of that. We'll talk more about that later.

0950

In conclusion, we firmly believe the Ministry of Labour and our industry can meet the challenges put to us by Bill 49. We anticipate even more significant challenges from the complete review that the minister has promised after its passage. Thank you for that. Any questions, Madam Chair?

The Vice-Chair: Thank you very much. We have just over two minutes per caucus, starting with the government side.

Mr Ted Chudleigh (Halton North): Thank you very much, Mr Surplis, for your presentation today. The act includes a redefinition of parental leave and pregnancy leave. It defines more directly vacation pay and what qualifies for vacation pay and severance pay. It talks about clarification of these definitions that have been put into the act in piecemeal fashion over the years. The fact that these things will change given the passage of this bill will require your organization and those organizations you represent to communicate with employers as to their new responsibilities under the bill. That educational process could go a long way, I think, in explaining some of the other aspects of the Employment Standards Act as well.

We have heard over our Ontario tour that an awful lot of employers and employees don't understand their responsibilities under the act. Could you include some of those basic responsibilities in that educational process that you'll be going through over the next year?

Dr Surplis: We can guarantee that, any changes. In fact, when this bill is changed and the highlights are known, we'll communicate that to the members. We do that as a matter of course, and so do our unions and employee organizations on the other side. So yes, it's very important to get the message out, because I couldn't

agree with you more, we get a lot of calls from people who simply don't know just even the basics. We welcome this clarification, because it's going to help come down just on time alone.

Mr Lalonde: Thank you very much for your presentation. It just happened to be that you're touching something that is very close to my heart.

Dr Surplis: I know that.

Mr Lalonde: The construction industry is the heart of the economy all over, not only in Ontario, but on page 2 you refer to international competition. Do you feel that we should have a clause in there that protects Ontario construction industries in Bill 49?

Dr Surplis: The construction industry, as represented by COCA, has never been in favour of restrictive practices. We've always said we can compete with anybody on a fair, level playing field.

Mr Lalonde: Which doesn't exist.

Dr Surplis: Well, vis-à-vis Quebec right now, you're quite correct. But for instance, we've always opposed the Windsor area saying that only Windsor contractors can bid on something and nobody from Sarnia and so on. We've always opposed that routinely, saying that it should be open to everybody. But I know what you're getting at and we have led the charge. We asked the previous minister, Ms Lankin, and others, to put up barriers, or at least prepare to put up barriers, for Quebec in order simply to get a level playing field.

Mr Lalonde: I really feel that a clause should be added to Bill 49 to protect our Ontario construction industry because our biggest competitor at the present time is Quebec, which doesn't meet the health and safety standards. The Ontario government in three years has paid over \$50,473,000 in WCB to Quebec. We have unemployment in some of the trades up to 70% in Ontario and still nothing's been done. I'm not blaming this government more than the Peterson or the Bob Rae government or the Davis government, but today the peak of construction is not there any more. So we need something and I really thought that Bill 49 could add a clause in there to protect our construction industry.

You said that at the present time the competition is international. We know it's within our own country. Just driving on Highways 401 and 416 and also in this area what I see when the three largest hospitals were renovated here in Toronto. Who got the contract? Quebec construction people. They all came in. They don't pay half of the health and safety that they are supposed to be paying or the WCB. I think we have to look very closely in this bill, by the end, to see if there is something that could be added to protect the construction industry.

Mr Christopherson: Thank you very much for your presentation. First of all, thank you for the compliment of our previous government's initiative with Highway 401 and the expansion of the convention centre. It's appreciated.

I was somewhat surprised to see that you would think that Bill 49 is not just housekeeping. Do you really think it's not just housekeeping? Do you think there's more to it?

Dr Surplis: The reason we say it's not just housekeeping is, it's a signal that there's more coming at

what kinds of things are coming, more emphasis on self-reliance. As I said, the construction industry is quite prepared, both the union and management, to take on these challenges. We anticipate them, not just in Bill 49 but in what's to come, and we welcome it.

Mr Christopherson: How would you explain, given your thought on this, that the minister tried to ram Bill 49 through the House last June, claiming it was just housekeeping? Since you believe it's not, how do you feel about that?

Dr Surplis: I have no idea about that, but when I say "not just housekeeping," I'm talking in terms of philosophical and public relations meaning to the greater community, not the internal —

Mr Christopherson: I don't disagree with you one bit on that.

The last point is that on your first page you talk about what the government should in this legislation protect basic standards for employees, yet part of what this bill will do is take away one of the basic standards right now, which is the right to claim for all money. There will now be a minimum put in place, and we've heard from enough presenters that people can't afford to take time off work, they can't afford to hire a lawyer to go after a lot of this money, which might be 80 or 100 bucks. That's a right they're losing. How do you square that?

Dr Surplis: The maximums have been changed. One of the things I answer to that, in all fairness, and I did want a chance to say it certainly publicly here, and that is to pay a compliment to Richard Clarke and the staff of the Ministry of Labour who are not asleep. They are very alert to outrages in the community and fight them from the inside, just as I expect members of the opposition and MPPs from all parties to raise these issues in the House and elsewhere when there's egregious examples of malfeasance or whatever. I just don't think these are going to go unnoticed. Things will be challenged and addressed.

The Vice-Chair: Thank you very much. Time has expired. We do appreciate your coming this morning.

EMPLOYMENT STANDARDS WORK GROUP

The Vice-Chair: I would ask that representatives from the Employment Standards Work Group come forward, please. Good morning, and welcome to our hearing process here this morning. I would ask that you please introduce yourselves.

Ms Jan Borowy: My name is Jan Borowy. I am a community legal worker at Parkdale Community Legal Services, and with me today is one of the longest-standing members of the Employment Standards Work Group, Consuelo Rubio, from the Centre for Spanish Speaking Peoples.

By way of introduction, the Employment Standards Work Group is a network of community groups, agencies and community legal clinics based in Metro Toronto. Our group is made up of front-line workers who work with, counsel and represent workers on employment standards matters, all workers who are not in unions. In any given year we work with 25,000 workers. We first formed in 1987 in response to a large garment factory closure. In

this case, the workers were left with unpaid wages, no severance or termination pay. Interestingly, the company opened up under a new name shortly after its original closure.

We've been very active pressuring each government that has been in in the last number of years to improve the Employment Standards Act. Our demands have been consistent: We want to improve enforcement of the act and the loopholes and exemptions by mending the current weak legislation with a new and improved Employment Standards Act. Our demands today to you are no different: We want better enforcement and we want to see the introduction of a stronger law. Today we will present to you a simple alternative to Bill 49, a concrete action plan.

1000

In May, when Bill 49 was first introduced, it was called minor housekeeping. The Minister of Labour claimed that Bill 49 changes are minor amendments to streamline the act. In August, at the start of these hearings, and publicly since then, we've been hearing that Bill 49 will actually in fact help the most vulnerable workers. The minister also claims that the central purpose of Bill 49 is to improve enforcement.

We've written a particularly detailed brief for you, which you have in front of you. It has been endorsed by over 36 organizations and individuals. These organizations have come together in their analysis and have drawn the same conclusion: Bill 49 will not protect vulnerable workers and will not improve enforcement. In fact, a close examination of the details shows that claims that it will are either false advertising or fabrication using the best Orwellian doublespeak possible.

In fact, Bill 49 introduces four profound and significant changes that we detail in our brief, directly and severely limiting the enforcement of employment standards: the new limitation periods for claims and investigations, the new ceiling and the new floor on the amount workers can claim, the limited avenues in finding access to justice, and the privatization of collections.

Without a doubt, the change with the greatest impact will be the new limitation periods: removing the two-year limitation period to make a claim and removing the two-year investigation period. The minister's claim that the six-month limitation period is cost-effective and efficient is simply, from our vantage point, untrue. The two-year period is absolutely essential because of the ineffectiveness of the ESA to protect workers from any employer's reprisals. Over 90% of workers make a complaint once they've left their employer. Most workers tolerate violations as the price for retaining a job. Workers know they face the choice between their rights or a job. Bill 49 enables an employer to violate the law for over a two-year period and be accountable for only six months.

Moreover, the new ceiling and the new floor to claims is setting a new standard for draconian legislation. The ceiling of \$10,000 will have an impact on vulnerable workers in many sectors, even sectors with particularly low wages. We know of domestic workers and many others who are owed more than \$10,000. The minimum cap is a licence for an employer to hire workers for a few days and then fire them and get away without paying them.

Some of the committee members clearly may not agree with this analysis, so in order to indicate to you the profound impact of Bill 49 and the current lack of enforcement of the ESA, we've collected a number of stories. These stories show the current lack of enforcement of the Employment Standards Act. It's the stories of the workers' real wages and working conditions here in Toronto. Many of the stories come off of our bad-boss hotline. It's a project that was started by the Employment Standards Work Group five months ago as a pilot; it's now supported by the Ontario Federation of Labour and it has now gone province-wide. You'll find that these stories cover most sectors of the economy. They demonstrate workers are not paid minimum wage, they're working long hours for no overtime pay, and there are many other significant violations of the act. Ongoing violations of the act are particularly widespread and we have many stories in here that when workers try to enforce their rights they are fired.

So the stories do show the profound impact of Bill 49: workers who will lose over \$20,000; workers whose wages may be cut off the minimum; workers who are not aware of their rights and when they miss the six-month deadline.

Our stories were released yesterday at a press conference and after the story ran on CITY-TV news last night and late yesterday afternoon, what has been interesting is that the hotline rang off the hook, and these are report-backs from just yesterday. A worker called in to say: "I'm calling from a restaurant. You can't call me back at work. I'm getting less than minimum wage. I'm getting \$3 an hour." A worker at a car company is owed \$550 for work and has only been paid \$65 in cash to date. A woman is still owed over \$2,000 from her employer and the Bill 49 new time limit would erase her claim. That was just yesterday afternoon and that was in a 20-minute period after the airing of the CITY-TV show.

The overwhelming comments yesterday from the workers who called the bad-boss hotline is that "we cannot complain because my boss will fire me." In fact, even our own stories, 11 of them in our collection, are stories of workers who lost their jobs once they complained. So the existing enforcement is ineffective and the act, unlike other pieces of legislation, like the Canada Labour Code or even the Workers' Compensation Act here in Ontario, does not contain an effective reprisal section.

I know many of you have said that there is a reprisal section. Well, it's ineffective. Workers are not reinstated, because there is no just-cause protection. It's not the practice of the ministry to reinstate workers, because there's no just-cause protection, because an employer can turn around and fire them the next day.

We have recommendations for you to seriously consider to prevent the violations of the ESA and to make it truly more effective and efficient. Our immediate action plan for you today is that we want you to repeal Bill 49. This is a bad-boss bill and it will have an impact on vulnerable workers.

Our action plan has four steps. First we want you to remove the six-month limitation period and reinstate the two-year period for claims and investigations. Second, remove the ceiling and remove the floor on the amount

a worker can claim. Third, we want you to stop employers' reprisals in two ways. We want you to implement Operation Spotcheck. We want 10% of employers audited in the next year. If you can do it in the trucking industry, if you can stop a truck, you should be able to stop an employer. The employers are speeding along the employment highways today and not being stopped. You can do this simply.

Combined with that, we want the option for workers to make anonymous complaints for a third party. The ministry knows many notorious employers. It's time the ministry did something about it. We want you to give all of those workers who called in just even yesterday afternoon an option for launching complaints, doing it anonymously and doing it through a third party.

Finally, don't privatize collections. Using a private collection agency does not do a thing to ensure workers have rights, and in fact the current suggestion that claims may be settled at less than 100% is absolute nonsense.

Given that the minister has called Bill 49 changes improvements, we feel that the upcoming announced review does not bode well for workers in this province at all. We know there are clear and simple ways to improve the legislation. For example, there shouldn't be any exemptions in the act. We should have overtime paid very clearly after a 40-hour workweek. We should have an option to sick leave. Right now if your child is sick, often you lose your job. You simply don't get paid if you leave the workplace to go home and take care of a sick child.

We want real equal pay for part-timers. We need a statutory minimum of three weeks of paid vacation. We want workers to have the option of paid breaks. We want, as I've said, the right to sick leave. We want more protection for home-based workers, especially teleworkers who are not covered in the act currently. Most importantly, we want you to introduce just-cause protection.

Bill 49 is a gift to employers. We expect you to give our recommendations serious consideration and we encourage you, as the employer groups come before you throughout the rest of the day, to ask these employee association reps to account for the stories that are in here. When the restaurant association comes forward, ask them how they account for the stories in here. I can expect that they won't have much to say.

There's no way that they can turn around and say Bill 49 will not have an impact. Indeed, as these stories show they truly will.

The Vice-Chair: We have just under five minutes remaining for questions and answers, starting with Mr. Hoy. I guess a minute and a half each.

Mr Hoy: Thank you very much for your presentation this morning. I had asked another group if we were going to get some indication on the bad-boss hotline and what might be called in to it, and I appreciate having that overview of what's happening. I would assume that this is not nearly the number of calls that you've had.

Ms Borowy: No, it's not, and in fact to ensure authenticity, this collection is both from the bad-boss hotline and some front-line workers. We put a call out to a front-line workers in our group to say, "Please send us your stories," and this is that collection.

But it's only the tip of the iceberg. Our phone line in the last five months has literally been ringing off the hook. Any time there is any publicity or advertising associated with a particular story, then it rings off the hook, literally with a call a minute.

1010

Mr Hoy: Not having had a long time to look at this Bad Boss Stories but scanning through it, it appears to me, although it's not 100% accurate, that many of these people are perhaps working in the non-unionized service sector area. Many of these job descriptions that go with their complaints do seem to me to probably be from the non-unionized service sector. We've heard a lot over the last two weeks, and now into this week, from that group. Would you agree that these people, who by and large make minimum wage and are unorganized, seem to be the brunt of employee violations in regard to this issue?

Ms Consuelo Rubio: If I may answer that, actually, the reason perhaps why there is no complaint from unionized workers is because that is the group that we work with. It's not that we've left them out. It's just that those are our communities, the people that we work with and that we represented for a number of years.

The Employment Standards Act has traditionally been the only protection that those groups have had. They're not unionized; you're right in that. Domestic, as you know, didn't even have the right to be unionized until 1990. The retail sector, again, is not a sector that has been traditionally unionized. So that's probably why.

These are the calls that we have received. These are not the calls that the OFL received when the line went province-wide. They received, according to Mr Schenk, their researcher, thousands of calls in the province-wide 1-800 line.

Ms Borowy: Absolutely. I think that this —

The Vice-Chair: Excuse me, I will have to move on to the next question. We've exceeded that as well.

Ms Borowy: Can I add one other point in response to this?

The Vice-Chair: Maybe if you want to incorporate it in an answer to someone else's question, feel welcome at that stage. I'm sorry, we're now over.

Ms Borowy: The point I wanted to make that Catherine Swift, who actually had almost 25 minutes —

The Vice-Chair: Mr Christopherson for questioning.

Ms Borowy: Catherine Swift had almost 25 minutes, but the point I wanted to make that she has said that small employers are the victims. It strikes us that there's no other comparison that can be made. There's nothing — these are the real victims.

The Vice-Chair: Mr Christopherson, would you like to ask a question. Your time is now running, please.

Mr Christopherson: I want to thank the Employment Standards Work Group. I think if anybody could take just a moment to look at appendix C and to see who has made up this group, they'll recognize the credibility that's here, and these are not the types of organizations and individuals that, if this bill really was going to make things better for working people, would put their reputation on the line to oppose it. There's a strong message there. I urge the government members to look at appendix C.

I want to thank you for this because it finally gives us a document that we can wave around that talks about what's really going on out there, and I think that's absolutely necessary.

I want to focus one bit on a new issue that you've raised that I think is crucial. This government has said they're interested in making sure that the reprisal mechanisms work properly. You've pointed out that right now there's no law that prevents a person from being fired. You can't get your job back through any means.

I'm from the labour movement. I'm not aware of a collective agreement that doesn't have a just-cause clause that says you can't fire somebody if you don't have a good reason, and if you don't have a good reason they get their bloody job back.

Could you just expand on why you think that would make a real difference, and I hope the government listens because you've asked for help on this, Mr Baird, and here's one that'll make a big difference. So if you folks are really serious, here's a way to do it.

Ms Borowy: Okay, the best way to stop and to protect workers from employer reprisals is twofold. We want administrative changes. We want Operation Spotcheck so you're going in and doing spot audits. You can do it for trucks; do it for workers.

Secondly, workers need the option of an anonymous complaint system through a third party, and we need legislative change which introduces just cause. Right now, unlike what Catherine Swift was saying, employers have the upper hand. If they don't like a worker, if they don't like what that worker is wearing, if they don't like the smile on that particular worker's face, they can get fired. We need a section that puts the onus on employers that says there has to be a reason why a particular worker is being let go, and that's just-cause protection. It's in the Canada Labour Code; we should have it here in Ontario.

Mr Christopherson: On behalf of all vulnerable workers, I want to thank you and the group for the work you're doing. I think you've made sure that the government has been called to task and they haven't been able to get away from the damage they're doing to vulnerable workers by either legal means or fancy means. We got them out on the public hearings and I just want to thank you for the leadership role that you play and assure you we're going to continue to fight at this level against action like this, which is part of a litany of attacks on unionized and non-unionized workers across the entire province. Again, thank you.

Mr Baird: Madam Chair, do I have three minutes or one and a half?

The Vice-Chair: You've one and a half and it'll be expended equally as the others have taken advantage of the same position.

Mr Baird: Thank you for your presentation. I guess the bad-boss hotline — I think that's just a poster or it's a commercial for reform of the ESA. It certainly has got to be modernized definitely and I think the stories here will be an excellent part of the consultations with respect to an overall reform in phase 2 of the act. Clearly we've got to do a better job in a changing workforce.

Ms Borowy: Absolutely, so when you say that you want to improve the act, why are you taking away the

right to a worker to claim all of the money they're duly owed?

Mr Baird: We're not.

Ms Borowy: Yes, you are.

Mr Baird: We're not.

Ms Borowy: The \$10,000 cap —

Mr Baird: My second issue I'd like to talk about —

Ms Borowy: Mr Baird, the \$10,000 cap is a complete violation of a worker's right.

Mr Baird: We're not removing —

Ms Borowy: You're stealing from workers, Mr Baird.

Ms Rubio: You're stealing.

Mr Baird: Thank you. You obviously don't want to —

Ms Borowy: I'm interested in real improvement.

Mr Baird: You have obviously come forward, you know everything. You don't want to discuss it with anyone.

Ms Borowy: We've been working with this for over 17 years.

Mr Baird: I look at your figure here, with great respect, under the NDP the claims tripled — tripled. Were you here complaining at them? No, you weren't.

Ms Borowy: Actually, yes, we were.

Mr Baird: If it was such a good job —

Ms Borowy: We were.

Interjections.

Mr Baird: If the suggestions you raised were so easy to do, I wonder why Mr Christopherson's government didn't do it right away.

Ms Borowy: We put the same question to them. You're not alone.

Mr Baird: I wonder why they didn't do it right away. If they were so anti-worker, why didn't they do it right away? Some of these things are so easy, it's just a case of —

Ms Rubio: Mr Baird, if you're interested to know what we did under the NDP government, you should talk to Mr Richard Clarke, who was referred to earlier on. We were pressuring the government to enforce an act because enforcement then, as it is now, was lax.

Mr Baird: It tripled; it got even worse.

Ms Borowy: Yes. One pilot project —

Mr Baird: It tripled in three years.

Ms Borowy: — on anonymous complaints was cancelled. That was a project we had in place that we wanted and should continue to be in place. You've got an option. If you're serious about improvement —

Mr Baird: We're not satisfied with 25 cents. We can do better than that. We're not satisfied with the status quo. I mean if they had frequent flyer points —

Ms Borowy: Then why are you putting a cap on it and announcing a minimum —

Mr Baird: If they had frequent flyer points —

Ms Borowy: Why are you announcing a minimum?

Mr Baird: — for trips to Utopia and fantasyland, this guy could travel around the world 10 times.

The Vice-Chair: Excuse me. I think it would only be proper protocol if one person spoke at a time, and since time has expired, I do appreciate you making your presentation this morning. Thank you very much.

Mr Christopherson: Stop lying to the people, John —

The Vice-Chair: Mr Christopherson, I think that perhaps we have a protocol on how these hearings happen and we're not exercising it well. Please, if we could all cooperate in this procedure, I think we'd be doing a lot better.

NORTH YORK WOMEN TEACHERS' ASSOCIATION

The Vice-Chair: I would ask, please, that the representative from the North York Women Teachers' Association come forward. Good morning. I welcome you to our process.

Just in case you're a late arrival, I would like to remind those present that we are limited to a 15-minute presentation, including the presentation and question-and-answer period. As we progress through this morning, we can see that we're not necessarily getting the cooperation of everybody, so I will start cutting people off now. Our last four delegations, for the record's sake, the first one lasted 18 minutes and 45 seconds, the second 17:05, the third was 15:15; after having had a discussion the last one just went to 18:40.

The timekeeping is checked. We're trying to be fair. This is not your fault and I hope that maybe we can bring her back on track here. I will be cutting people off right in the middle of answers, right in the middle of questions from now on. I've asked for support in doing it the right way, but if that's not going to work, in fairness to all those who have to make a presentation, I will be doing that. So, please, I welcome you to our hearing process this morning and I would ask that you introduce yourselves to all present.

Ms Heather Garrett: Good morning. My name is Heather Garrett and with your permission, I would like to actually race through what I've given you because I'm actually a little bit delayed for another meeting at this point.

I have concerns about section 3 and the ongoing use of "greater right" as terminology. I would like to know what a definition of "greater right" is. I would also like to know, given the current amendments in Bill 49, what "assessed together" would mean in terms of being balanced off by greater rights and how that will affect people's collective agreements.

The repeal of section 5 is somewhat frightening to my group because of the effect it may have upon our collective agreements, in which case people could be again looking for tradeoffs of assessed together packages for greater rights and in the process losing things they have already gained through their collective agreements. We have an ongoing concern about maternity, pregnancy, parental leaves, and the fact that the probationary period is excluded from the pregnancy leave is disturbing to us as people continue to want children to be born and taxpayers to be born, yet for women to do this, they can put themselves at greater risk in their jobs.

1020

I had heard a previous speaker discuss this. We also have a concern about the collector agencies and the scope that they're given to be able to negotiate agreements for people around their wages. There's a 75% factor that they

can agree upon. We are concerned that might become the norm and in order to expedite getting agreements resolved, they will look to have 75% agreements made.

There's also a concern from our end on the electronic transference of information. Who ultimately will be responsible, should information go amiss? On top of that — it's not within our brief; I didn't think I would have the time — but we also have concerns about minimum and maximum wage settlements and floors and ceilings on them.

I have a question that I would like to ask. I'm afraid I didn't have much — I was informed, I believe, on Thursday of this and my week has been booked. I apologize for the dot matrix printing and there is a spelling error, and I'm very sorry about that as a teacher. I would like to ask though: I was looking through the Internet for information from you, and given particularly that you have within this bill the idea that electronic information will become a process within the Employment Standards Act, I was looking on the Internet on your Web site, I could not find new information on Bill 49; I could not find anything on Bill 49. May I ask, is that information available on the Internet?

Interjections.

Ms Garrett: I take it that's no?

The Vice-Chair: I'm just checking with those who would be responsible.

Ms Garrett: Okay, thank you.

The Vice-Chair: Just two things. The gentleman here operating our equipment has asked me that you sit back a little bit from the speaker so we can pick it up for Hansard purposes.

Ms Garrett: Sorry.

The Vice-Chair: The response to the question?

Mr Baird: Clearly, we're wanting to expand that. Right now, all of the hearings, for example, the verbatim transcript of yours will be on the Internet, I think, tomorrow. It's regularly updated. Obviously we're just in the process, as the Internet grows, of expanding that.

What the provisions in the bill do is allow you to file electronically. They don't force you to file electronically because obviously many workers don't have access to the Internet. Only 11% of Ontarians do, so this bill just allows access. It's obviously a cost saving. We could publish the bill and a whole host of stuff. So only the three weeks of Hansard are on the Internet at this time.

Ms Garrett: May I ask a follow-up question? Given that you're going to be putting something on the Internet, will it be interactive so people can send you information regarding this bill as of tomorrow to the committee?

The Vice-Chair: Do we have a response to that? Hansard will be on. I think if you would like to react to anything you see on the Internet as a result of Hansard reporting on there, it might be best, right now, that in fact you do it through hard copy to the clerk of the committee to ensure that your concerns are taken into consideration.

Ms Garrett: Thank you.

The Vice-Chair: We are left with 10 minutes, which we will divide evenly, starting with Mr Christopherson around the range of two and a half minutes, please.

Mr Christopherson: Are your time constraints such that we can use the time available or do you need to get going?

Ms Garrett: I have to go in about five minutes.

Mr Christopherson: Fine. Why don't I just then give you the opportunity for the time I have to pose a couple of the questions you've asked here directly to the parliamentary assistant and maybe that way you'll get the most out of this that you can.

Ms Garrett: Okay.

Mr Christopherson: She's asked questions in here. Maybe you could answer some of them.

Mr Baird: Which ones would you prefer me to answer?

Ms Garrett: I'm sorry, regarding the questions within my presentation, the ones that I'd like to have answered? I would like to know who will determine what the greater right is when assessed together for collective agreements.

Mr Baird: The minister, on the first day of the hearings, withdrew section 3 of the bill, pending further consultation with the phase 2 review. Obviously, though, the best determinative of that would have been the union itself. For obvious reasons, they wouldn't enter into provisions in their collective agreement which they wouldn't be able to define, so obviously that would be up to the union and management to collectively decide how to interpret the provisions of their collective agreement as they do in the exhaustive measures of their current collective agreement. I don't know of any union in Ontario that would sign a provision if they didn't know what it meant.

Ms Garrett: Can I ask then — I don't want to make this sound hostile, but what that would boil down to possibly then is the union having packages presented to it that it could determine are not of the greater good assessed together and yet, if they do not accept them, they will be forced to strike, which is the collective bargaining process currently, so —

Mr Baird: That would be the same for any other provision within their collective agreement, whether it was the wage level, whether it was benefit levels, whether it was other terms and conditions of employment, if they didn't like them, in your words, they would be "forced to strike." This provision wouldn't be different from any other of those negotiating —

Ms Garrett: Now that there are minimum standards —

The Vice-Chair: Let's just clarify our position. Would we all agree that for the full duration of the five minutes we allow open question and answer, or does each party want to have a —

Interjection.

The Vice-Chair: I'm sorry. We'll have to go on to the next member here.

Mr O'Toole: Thank you very much, Heather. As a teacher, I gather you're finished vacation and back to school?

Ms Garrett: I am on release, working for our union.

Mr O'Toole: Oh, I see. You're full-time with the union?

Ms Garrett: Yes.

Mr O'Toole: I was wondering. That is very interesting.

The greater rights provision, I think, given the fact that you're representing more or less the women teachers' federation, I guess the question I have to you is —

greater rights, section 3 — I think we could learn a lot from the teaching unions. A standard workyear is 2,080 hours. I'm not certain there are that many hours in the nine or 10 months of the academic year. Do you understand what I mean? They already have a lot of exemptions. The standard workday traditionally is eight hours at the place of work, and in the case of salespeople and other kinds of profession, the hours of work here are quite different than the typical punch-clock hours of work. So I think the greater rights provision has been a long-standing contest to achieve more and more vacation and professional development days and all those things and the teaching profession certainly stands as a clear model of "I'd love to have one of those jobs" kind of thing out there. How do you respond to that kind of —

Ms Garrett: Do I understand that the member is asking that teachers would work an eight-hour day and perform none of the other responsibilities, that they would be released from every other responsibility that they do outside of their eight-hour day?

Mr O'Toole: No. I'm kind of saying that on traditional jobs the comparison — it isn't comparable to a traditional job. Would you agree?

Ms Garrett: I believe teaching is quite a traditional job for many people.

Mr O'Toole: I think the point has been made though really —

The Vice-Chair: Mr O'Toole, I think your time has expired.

Mr Hoy: Thank you very much for your presentation this morning. I agree with you that this definition of what and who determines the greater right is going to be very difficult for the government. I think they're going to have considerable grief over that particular issue, and I share your concern with that.

You just answered that you are involved with a union background. If you became unemployed tomorrow and were not working for a unionized workplace, would your opinion of this bill change at all?

Ms Garrett: I would have to take more time to consider that. I find that very complex, and I would need to go back to the bill and check it out again, and the Employment Standards Act as it stands now.

The Vice-Chair: Thank you, Mr Hoy.

I'm sorry we've kept you behind. Thank you very much for being here.

The 10:15 Ontario Coalition for Social Justice has cancelled.

ONTARIO RESTAURANT ASSOCIATION

The Vice-Chair: We would now ask the representative from the Ontario Restaurant Association to come forward. Good morning, sir. For the sake of Hansard, I'd ask you to introduce yourself.

Mr Paul Oliver: Good morning. My name is Paul Oliver. I'm the president of the Ontario Restaurant Association. It's a pleasure to be here today to discuss our association and our industry's views on Bill 49.

Ontario's foodservice industry is a huge and diverse sector comprised of approximately 23,000 individual workplaces spread throughout all regions of Ontario. The

industry is predominantly small business with independent operators accounting for approximately 78% of these establishments. The industry employs over 250,000 Ontarians possessing a wide diversity of backgrounds, including language skills, education and cultural backgrounds.

1030

With this diversity in composition, location and skills, the restaurant and foodservice industry requires a unique and special approach to employment standards. The characteristics of the foodservice industry certainly are not conducive to the one-size-fits-all approach currently adopted. The diversity of the hospitality industry requires that flexibility be built into the system so as to achieve employment standards protection and flexibility for all employees.

The Ontario Restaurant Association and the foodservice industry welcome the introduction of Bill 49 as the first step to reforming, updating and modernizing Ontario's Employment Standards Act. We believe Bill 49 is a positive first step towards the desperately needed modernization of the current act. The current act, from the perspective of the hospitality industry and the small business community, does not adequately reflect the workplace changes and employment relationship changes which have transpired in Ontario over the last 20 years. Over this time we have seen a dramatic change in the composition, design and functioning of employment and of the employment relationship in Ontario as well as around the world, yet throughout this period the Employment Standards Act has not undergone any substantive updating or reforming to reflect these very real changes in our workplaces. Over the last 20 years we have faced small, short-term changes which have provided a patchwork around the original act. The time is upon us now to undertake the rewriting of the act, to redesign the structure and the operation of the act to reflect today's modern workplaces and today's modern employment relationships.

Bill 49 is a first step towards that. However, it is important to realize from the perspective of Ontario's hospitality industry that Bill 49 is merely the first step of a long journey which we must travel. We believe the more pressing and more important reform to the Employment Standards Act must be contained in phase 2 of this process, which we understand the government will proceed forward with later this year. We urge the government to move forward with phase 2 reform in an expeditious manner. We do, however, applaud the government's actions to begin this reform process with the introduction of Bill 49 and a number of administrative and enforcement changes which in the interim will improve the operational efficiency of the Employment Standards Act.

In particular, we'd like to lend our support to changes relative to preventing the duplication of employment standards claims in court actions, the enhancement of mediation and complaint resolution within the workplaces with the assistance of employment standards officers, and the expansion of the appeal process from 15 to 45 days.

The Ontario Restaurant Association is very supportive of the provision in Bill 49 which would encourage employees to decide at the outset whether they wish to

file an employment standards claim or take the employment matter directly to the courts. As a result, this initiative will eliminate duplicate claims which in the past have left employers vulnerable, as they have been forced to defend themselves twice on the same claim and to incur the substantial financial costs associated with defending the same action in two different forums. This is particularly harsh on small business operators. This duplicate process also drains the public purse, as public resources are spent investigating, preparing and adjudicating the same claim under two different processes. The ORA strongly supports this reform initiative, as it will make the act more cost-effective as well as more time-efficient, and will free up additional resources that can be utilized in other areas where they are desperately needed.

Another area of change that the foodservice industry supports is the initiative by the Ministry of Labour that would give employment standards officers the power to mediate and resolve complaints upon mutual agreement of the workplace parties before conducting a lengthy and time-consuming investigation. The ORA believes that by encouraging workplace parties to resolve their own disputes or differences with the assistance of an employment standards officer rather than automatically going through a rigid prescribed process, the outcomes are more likely to be supported by both parties and be implemented in a more expeditious and cost-effective manner.

The ORA is also very supportive of the proposed change to increase the time limit to appeal a decision from 15 to 45 days. We believe this increase in appeal time will allow for the following situations to occur: a more reasonable amount of time for workplace parties to negotiate a settlement in place of proceeding with an appeal; more time to fully consider the weight and merits of filing an appeal, with the opportunity of decreasing the number of costly appeals; allow for workplace parties to assess the financial costs associated with an appeal; and most importantly, reduce the costs associated with a huge number of mid-process appeals that are terminated currently. The ORA believes this provision will benefit both employers and employees, as it will grant them more time, which is required when legal counsel is considering the possibility of an appeal.

We also believe this extension in appeal time will result in a cost savings to taxpayers, as many parties will be better prepared for an appeal. Also, the likelihood of frivolous appeals which are terminated partway through the process will decline.

While the nature of work and the workplace itself has changed and evolved dramatically, the Employment Standards Act has remained unchanged. As a result, there is inadequate flexibility within the act to permit all workplaces to provide adequate protection to employees without undue regulatory red tape. As mentioned previously, Bill 49 is only the first step in a long journey. The Ontario Restaurant Association strongly believes that the more serious and important reforms must be contained in phase 2 of the reform process and that this next phase must commence in an expeditious manner.

The ORA thanks you for the opportunity of appearing before the committee today and would like to re-emphasize our strong support for Bill 49 and our expecta-

tions for the second phase of the employment standards review process. Thank you.

The Vice-Chair: Thank you for your presentation. We have approximately two and a half minutes per caucus, starting with Mr Tascona.

Mr Joseph N. Tascona (Simcoe Centre): Thanks very much for your brief. I just have a couple of questions on this. As you're aware, union employees don't have the right to go to court with respect to claims. They go through their union. What's your experience with non-union employees going to court and at the same time lodging a complaint under employment standards?

Mr Oliver: Often what we see is a tactical process to put pressure on the employer to settle or just to cause controversy around an issue.

Mr Tascona: Are there a lot of cases, though?

Mr Oliver: There are some. Often you'll file both, and then whichever one you get a better settlement out of, you will accept.

Mr Tascona: I take it it would be a small percentage.

Mr Oliver: It's still a small percentage, but for employers, they never know what that certainty is. There's nothing that stops someone from going through employment standards, having all the employment standards provisions in force, and then turning around and saying, "I still don't like this; I'm going to go back to the courts."

Mr Tascona: What do you do with respect to educating your members on the Employment Standards Act?

Mr Oliver: We provide our members with an information service on inquiries that come in. As well, we have a publication on employment standards and we also distribute Ministry of Labour publications on employment standards.

Often one of the biggest things that we do is actually act as a gate or an entry, foray, into the ministry. Because employers may only have to deal with the Ministry of Labour once in their lifetime, they simply don't know who to contact, who to talk to. We try to act as that facilitator.

1040

Mr Tascona: Is it widely used by your members?

Mr Oliver: We get a large number of calls on employment standards, things as basic as: "How do I calculate holiday pay? How do I do this?" They want to make sure they're doing the right thing, but they simply don't know who to contact and how to make that contact. So we either provide the information to them directly or act as a facilitator so that they are talking to the right people.

One of the things we have found in the past is that if you talk to numerous different employment standards officers, you can get numerous different answers. They're often not clear. That's part of the problem with the act, because it is very much interpreted by the ministry at this point because they're trying to take an outdated act, apply it to current work practices and say, "This is the outcome." But depending on who that officer is — and it's no fault of their own; they're only interpreting what they see there. If we had the clarity put into the act, a lot of that confusion and different views and opinions coming out of different ministry branch offices around the province would hopefully disappear.

Mr Tascona: That should happen in phase 2.

Mr Hoy: Thank you for your presentation this morning. The restaurant business is one where actually I've had some complaints from constituents who are concerned about their rights in the employment area. I've asked others this prior to you being here. Some people in the restaurant business, employees, come in and maybe work two hours in the morning, another two hours in and around and after lunch, maybe another two hours, let's say, between 5 and 8 o'clock at night — rush times, clearly. Could it be that the employees feel that they're different from those who work from 9 till 5 in a more structured way, and therefore they feel that their rights are lessened?

Mr Oliver: Some may interpret it that way. If you look at the employment composition of our industry, a lot of people are working in our industry as second employment, they're working at it as a supplement to their education, to family commitments. One of the largest groups that we have working in the industry are parents who have family responsibilities. They want to be home at 9 o'clock in the morning when the children go to school, and they want to be back at 3:30 or 4 o'clock when they arrive home. You can't do that in a traditional workplace, but our industry affords them that opportunity to go out and work the lunch-hour, work four or five hours a week, work 20 hours in the week or 25 throughout the week. That's a flexibility in our industry that the traditional manufacturing or other sectors wouldn't accord.

For people who go to school, they're not looking to go 9 to 5, because they're in university or college from 9 to 5, you would hope. They're actually looking to work evenings. So some people may look at it as, yes, you're not working the traditional 9 to 5, but a lot of people would look at it as, "That gives me an opportunity to work that I wouldn't be able to work otherwise."

Mr Hoy: I didn't want to leave the idea that they are being victimized that way. But I wonder if the employees, because of these less structured hours as comparable to 9 to 5, get a notion in their mind that they are being or could be victimized. They don't seem to want to know more about their rights. They accept these flexible hours and other problems that arise out of that just by the nature of the business and may not make claims because they think they are "different" somehow.

Mr Oliver: I wouldn't think so. I think that people entering the industry recognize the diversity within the industry. Some people do work traditional 9 to 5 in the industry and a lot of people don't. When I worked in the industry I went there because I had school commitments. I was going to university, and I was paying for my university degree that way. Had it not been for the restaurant and foodservice industry, I probably wouldn't have gone to university. So I certainly didn't see myself as victimized by the industry. I thank the industry.

Mr Christopherson: Thank you for your presentation. Earlier we had presented to us *Bad Boss Stories* by the Employment Standards Work Group. I went through here; there are about a dozen cases that refer to food and beverage services. You'll appreciate that people are not suggesting at all that all employers are bad. That doesn't

even make any kind of sense at all. But there are problems out there. Here are at least 12 that are in your industry. The question they would like to pose to you is, and I will use this opportunity to do so, how do you account for these situations? You can get a copy of it, but each of them spells out a case where workers' rights have been violated in a very serious way.

Mr Oliver: I couldn't comment on that until I've had an opportunity to review it. I'd be more than happy to get a copy of that and look into those types of situations and follow up with you.

Mr Christopherson: Fair enough, but if you could at least accept the fact that there are going to be bad employers somewhere, and if these are reflective at all, it does make the case that this sort of thing can and does happen, unfortunately.

Mr Oliver: Yes, certainly. I don't think anyone is saying that every employer in Ontario is perfect. We know that there are problem employers, and that's where we need to focus the resources. We need to target the resources. We don't have these infinite resources that we can be out policing everyone and doing policing. The perfect example would be if you had an employment standards officer in every workplace monitoring everything that was going on. The reality is that we don't have those resources. The reality is that we need to focus on where the problems are.

Mr Christopherson: The difficulty we have is that you make comments like "the diversity of the hospital industry requires that flexibility be built into the system so as to achieve employment standards protection and flexibility." As a standalone sentence, I don't think any of the people representing workers would disagree. The problem is that the proposals contained in Bill 49 take away rights and diminish the basic rights that would prevent this sort of thing from happening, and worse. That's our concern, making sure that those bottom-feed type of employers have laws that stop them from doing that. The concern is that this law is taking away rights that help workers prevent that kind of situation, and you're supporting it. I find it contradictory.

Mr Oliver: But it also takes away jobs in some cases and it also takes away the flexibility the employees may want. Keep in mind that in our industry we have a lot of people who work for two different employers because of hour restrictions, because of the cyclical nature of the industry, because of conventions being in town or not being in town. They would like to have some flexibility. If they know a convention's in town this week and there are 50 or 60 hours available to work, they may want to work that because they know next week there are only 10. That's a fact.

Mr Christopherson: I'm sorry; with respect, that's not what's in Bill 49. That part of it's been pulled back. That's been pulled back right now. It's not in Bill 4 right now. What we are dealing with, what you're supporting, is a bill that now says you can't claim for \$50 that you're owed.

Mr Oliver: But what I'm saying is that's where the flexibility has to come in phase 2. The submission talks very much about the need for reform in phase 2 and that's where the flexibility comes.

Mr Christopherson: With respect, where do you get flexibility from somebody who's owed money and can't make a claim at the ministry any more? What's that got to do with flexibility? It's got to do with employees being ripped off.

The Vice-Chair: Excuse me, we have now expired the time. I'm sorry about that.

Mr Oliver: If I could just respond to the member's last question, if it was a question.

The Vice-Chair: I would like to be able to do that — maybe you can do that on a personal basis — but for the sake of others we have to go on. I'm sorry.

OPSEU MEMBERS —
MINISTRY OF LABOUR
EMPLOYEE RELATIONS COMMITTEE

The Vice-Chair: May I please have a representative from the OPSEU Ministry of Labour Employee Relations come forward? Good morning, sir.

Mr Robert Rae: Good morning. My name is Robert Rae. I am chair of the Ministry of Labour Employee Relations Committee. I represent the OPSEU members who work in the Ministry of Labour. On behalf of them I'd like to thank the members of the committee for the opportunity to make this presentation before you today. We appreciate this chance to present our views on Bill 49 and the potential impact on the enforcement of employment standards in this province and the possible impact upon staff working in this program area and represented by the Ontario Public Service Employees Union.

Our members work at the front line, delivering and enforcing the provisions of the Employment Standards Act. We provide the public services that force employers to comply with the minimum set of legislated standards. We believe this enforcement should be fair, consistent, cost-effective and efficient. Those unscrupulous employers who fail to live up to the minimum standards in the act should be made to pay the cost of enforcement. These minimum standards and enforcement activity should not and will not restrict the economic growth of the province. On the contrary, we believe that vigorous enforcement of these minimum standards, together with meaningful penalties for violators, should put most workplaces on a level playing field and prevent those unprincipled employers from taking unfair advantage of the workers of this province.

The serious issues surrounding amendments to the Employment Standards Act before this committee will affect all working people, whether they work for a multinational corporation, a unionized workplace or a small employer. We applaud Minister Witmer's withdrawal of section 3 of the bill, which would have made employment standards negotiable for unionized workers. We strongly urge the minister, through her parliamentary assistant, to withdraw the other substantive amendments of Bill 49 and deal only with the so-called housekeeping changes. These substantive issues we feel more properly belong in the comprehensive review of the Employment Standards Act, which we expect later on this fall.

The Employment Standards Act currently provides a minimum set of standards that protects approximately 5.8

million workers in the province. In the fiscal year 1994-95, the employment standards program received over 700,000 inquiries regarding the Employment Standards Act. During this same period of time, almost 14,000 files were completed, which comprised 9,468 assessments. These assessments involved 26,830 employees with respect to 48,700 potential violations of various sections of the Employment Standards Act. The most frequent violations claimed were with respect to vacation pay, termination pay and unpaid wages. The amount involved in these assessments was more than \$64 million owing to workers. This information is contained in the employment practices branch 1994-95 fiscal year report.

What this means to us is that in this fiscal year over 12% of the workers of this province were concerned enough about their rights and the minimum standards affecting their employment to make an inquiry with the ministry. At the same time, somewhere between 0.5% and 1% of the working population were victimized by employers who violated the Employment Standards Act.

1050

The work of investigating these claims was carried out by 104 employment standards officer 2s. They were assisted by approximately 36 employment standard auditor 1s, who do primarily claims intake, and clerical support staff. In some areas of the province there is at least a six-month backlog, and this means that an employee filing a claim today is unlikely to hear from the ministry for six months. High caseload demands, poor staff resource distribution and the lack of technological resources are some of the root causes for this situation.

In spite of these obvious delays and workload demands, the ministry has eliminated 34 positions in the employment standards program through its expenditure reduction strategy. The ministry also intends to abolish another 12 positions which will result in fewer officer 2s and less clerical support to conduct investigations, which will likely lead to a longer case backlog.

OPSEU is proud of the work done by our members in the employment standards program in enforcing the Employment Standards Act. This is about the workers of this province being treated fairly and equally. It is the role of government to ensure that there is a basic set of standards to protect workers' employment conditions. This is what government should continue to do.

In the next part of this presentation, I'd like to discuss three main points: enforcement of the act, minimum and maximum amounts of claims, and the use of private collectors.

In its current form, the Employment Standards Act allows unionized workers to bring their complaints to the ministry for investigation and enforcement. This has worked well in dealing with plant closures and claims on severance and termination. The proposed changes will preclude this approach and require the grievance process to be followed.

Arbitrators will supposedly be doing the work now currently done by OPSEU members. While most arbitrators are good at what they do now, we believe that complaints under the Employment Standards Act require a specific set of investigation skills gained through

experience in the field. Under the proposed approach, we feel significant inconsistencies in decisions are likely to result.

In a similar way, non-unionized employees will be faced with the challenge of choosing between making a complaint to the employment standards program that falls within the time limitations and the maximum amount recoverable of \$10,000, or taking civil action. The ministry is simply downloading the cost of enforcement to the employee who has been victimized by his or her employer and to the court system.

Strong enforcement of the act is needed to protect workers. The ministry is abdicating its responsibility to enforce the legislation. There is nothing in Bill 49 that helps to detect employers who violate the Employment Standards Act. As a result, there is no change to the present situation that violators stand little chance of being caught other than through employees making complaints to the ministry. Few prosecutions are carried out now and there is even less time to do routine audits, given the overwhelming caseload for each officer and the emphasis from ministry management on closing files.

In some cases there can be little or no penalty for violations of the act. Generally, if an employer pays up after an investigation, it means just paying the wages due. It's only after an order to pay has been made that a penalty of 10% is added to the amount owed. As a result, there's a great deal of interest-free money available for some employers for a considerable length of time until an investigation can be completed.

The situation is not fair to the majority of employers in this province who obey the law and who must compete with those employers who violate the act. Employers who violate the act must be forced to pay for the cost of enforcement.

Minimum and maximum amounts of claims: There's currently no ceiling on the amounts that can be claimed through the Employment Standards Act. Bill 49 proposes a new statutory maximum of \$10,000. This would apply to back wages, vacation, severance and termination payments. The ministry's expenditure reduction strategy report provided rationale that these higher-paid employees would use civil action to collect the outstanding amounts. The vital question here is whether an employee owed more than \$10,000 is really a highly-paid employee.

Perhaps we could illustrate this by way of an example: A middle manager of a medium-sized manufacturing firm with 12 years of service is laid off without notice because of downsizing. This employee makes \$33,800 per year, or \$650 per week. Under the current act, the employee is entitled to eight weeks' pay in lieu of notice and 12 weeks' severance pay. It's a total of 20 weeks' pay, amounting to over \$13,000. This "highly paid" worker would be forced to choose between filing a claim with the ministry and settling for a \$10,000 maximum or pursuing a civil action through the courts. This would result in an immediate \$3,000 loss, although it's probably less than what he would have to pay for a lawyer to get the civil action started. As a result, the employer gets a bonus of \$3,000 while getting rid of the worker. How many more workers would be placed in that position?

On the other end of the scale, we must consider the minimum amount that could be prescribed at some time in the future. Again, the ministry's expenditure reduction strategy report suggests a minimum amount of \$100. The reasoning would be to reduce the caseload by 800 to 900 cases per year. As an example, suppose you were working, at minimum wage, handling cash at a convenience store, where cash shortages are a possibility. An unscrupulous employer could automatically deduct any amount under that maximum of \$100 every six months on the pretext of cash shortages. Under the proposed changes, the employee would have no recourse to recover lost wages.

Use of private collectors: The privatization of collections is an area of major concern to OPSEU as a bargaining agent representing members carrying out this responsibility. We are concerned for at least two reasons: First, there have been many concerns raised by the ineffectiveness of the collection process within the ministry. These concerns voiced without explanation tend to reflect poorly and unjustifiably on our members who are doing that work. On the second part, we are concerned about the government philosophy that private collection is more efficient and cost-effective than collections by the public service.

The employment standards branch did have a collections unit for less than three years. The unit was surplus in March 1993. The collections responsibility at that time was transferred to employment standards officers and staff in area offices. Although the duty was transferred, program management has placed little emphasis on this particular aspect of the program. The main focus today for employment standards officers is to close files. A file is closed either when an employer pays up or when an order to pay is made. There's no clear indication from the program for officers to follow up on the orders to pay to ensure that they are enforced. Closures are the name of the game for employment standards officers. This is how their performance is rated, not on how much money is collected.

For fiscal year 1994-95 there were roughly 9,500 assessments, of which 6,812 were collected. This was a 71% collection rate. Unfortunately, the 71% collected, which amounts to more than \$16 million, is only about 25% of the total dollar amount of \$64 million assessed. Of the 2,771 uncollected assessments, 1,035 were due to employer refusals to pay. The balance was due to bankruptcy, receivership and defunct companies. The largest dollar amounts are due to the latter three reasons. It's unlikely that a privatized collection service will have any more success at collecting these assessments. In terms of employer refusals to pay, our members believe that many of these files are ultimately collected on orders to pay. However, we believe that the recording system does not accurately reflect these additional collections.

In fact, we believe the ability of our members to do their job is affected by the lack of adequate technology. Paper and pen are used extensively in dealing with claims. Claims are generally recorded manually; information is entered into a database afterwards. The ministry has never allocated the resources in terms of technology to either the employment standards program or the health

and safety program to automate routine tasks, make information available to those who need to deal with clients or minimize the steps and paperwork — form filing — necessary to do an efficient and cost-effective job.

Rather than privatize the collection function with profits going outside the government, it should be maintained within the ministry and provided with the resources, tools and management direction to adequately recover the moneys owing. Employers who are guilty of violating the act should know that it will cost them money to violate the act. They should pay an administrative penalty that reflects the degree of difficulty required to correct their violation of the act and recover the money owing.

1100

In conclusion, I'd like to say that the OPSEU members working in the employment standards program are proud to serve the people of Ontario. We've provided the services required by the public to the best of our abilities, in spite of constraints, downsizing and lack of technological resources. We hope the committee will consider the opinions of those dealing daily with the public and employers on these issues in your deliberations. Thank you very much.

The Vice-Chair: I thank you very much for your presentation. We are now at exactly 14½ minutes. I would invite anybody, if anybody chooses within the 30 seconds remaining, to make a short comment. I guess Mr Hoy would have first opportunity to do so.

Mr Hoy: Thank you very much for your presentation. It's unfortunate we don't have enough time here. The government has always stated that since there's only 25% of the total dollar amount collected, they fancy the idea of privatization. We had some people who are involved in collections suggest to us that they charge a fee of about 25% to 50% of the claim amounts or whatever the job requirement would be and that their success rate at the very best is only about 50%. Do you have any comment about those kinds of statistics?

Mr Rae: Again I say that the money that's charged to collect, someone will have to pay for collections, and we hope it's the people who are being collected from. We feel that rather than going into the private sector it should fund the enforcement of the act.

Mr Christopherson: I thank the union for making a presentation. As I've done before, I would acknowledge it takes a fair bit of courage to come forward. I think we can expect Mr Baird to again acknowledge that there won't be any recrimination against the workers who are coming forward and opposing their political masters at this time in the interests of the people of Ontario.

I would hope a lot of people would pay close attention to this document. This is from the folks who know. All of us can talk all we want, there can be a lot of outside experts, but these are the people who know, who deal with these issues and who understand very clearly what damage Bill 49 would do. I think they've refuted the arguments around minimum and maximum amounts. I think they've refuted the argument around privatization by pointing out that privatization isn't going to collect any more money than internally, if the improvements were made that are pointed out should be made.

I know you're going to rule me out of time soon, Chair, but I also want to draw attention to a letter that was sent to Mr Arnott on August 23 by Mr Rae, talking about comments that Mr Baird made, where the union didn't get a chance to respond to this, the workers' involvement in decisions of recommending Bill 49. I think it's an important document that needs to be noted on the record and I hope people would look at that also.

Just in closing, I want to thank you and your colleagues for having the courage of your convictions and your professionalism in coming forward publicly and pointing out that Bill 49 is not an improvement for employees and that's what's supposed to be happening over at the Ministry of Labour.

Mr Baird: Thank you very much for your presentation. It's appreciated. Given we don't have enough time for questions, I guess I'd just make one comment. One presentation we had on the first day, on August 19, was from Leah Casselman. I think in her remarks she spoke to the root of the issue with respect to collections. I think she said, and I'm paraphrasing her but I think it's the exact words, that the ESA officers as currently constituted don't have a pecuniary or a personal interest in terms of the collection, and obviously pointing out that a private sector collection agency would. We heard from one, for example, that not only do workers get a salary, they also get a commission on the amount they're able to return to the worker. Obviously, in this case the commission is paid for by the deadbeat employer. I guess that's something that we note.

You noted in your remarks that these reflect poorly and unjustifiably on your members with respect to collections. I guess I share your concern. It's what I would call the system rather than the people involved in it. I do, for the most part, agree with the concern you raise in that part of your presentation.

The Vice-Chair: Thank you very much for making your presentation this morning.

METRO TORONTO CLERICAL WORKERS LABOUR ADJUSTMENT COMMITTEE

The Vice-Chair: I would ask that a representative from Metro Toronto Clerical Workers Labour Adjustment Committee come forward, please. Good morning and welcome to our hearing process this morning. If you could just hang on one second, we're having your brief distributed now. If you'd like to introduce yourselves to the people present, it would be appreciated.

Ms Alice de Wolff: My name is Alice de Wolff and I have worked as a researcher with this committee for several years now. Maureen Hynes is a member of the committee.

The Metro Toronto clerical workers committee was established almost four years ago now and completed an 18-month study of clerical work and clerical workers in Metro Toronto in September 1995. We want to particularly tell you about the findings and the experience of this committee, because it represented the work of a particularly advantaged group of people who represented business and union people who represented workers and community-based training organizations that do work

with clerical work. We spent time investigating what's happening with clerical workers and then worked through a fairly intensive process of coming to recommendations about what we think should happen, both at policy and program levels, for clerical workers.

The committee was established by the Canadian Labour Force Development Board and was funded by both the federal and provincial levels of government. The intention was that we study the employment patterns of clerical workers, that we take a look at what's happening with training for clerical workers and adjustment programs. Again, our intention was to make recommendations to employers, unions, trainers and governments based on these findings.

Clerical workers are shockingly invisible at all levels of policy and program in this area. Partly because of that, I'm going to take a few minutes to tell you what we found in our study.

Clerical workers are the largest occupational group in the Metro Toronto region. There are 185,000 clerical workers in Toronto. They experienced, contrary to a lot of popular opinion, the largest job loss during the period of 1990-94. The only increase in office employment in that period was in the hiring of office workers through temporary agencies. Clerical workers experienced the highest unemployment rate that they ever had in 1994, and increasingly there are clerical workers on the permanent welfare rolls in Metro Toronto. That's something that has never really happened before, but the number of clerical workers receiving welfare in Toronto increased threefold during that same period.

Underemployment has increased in the occupation. Clerical workers are working at levels under their training, and there are more people who are trained in other occupations who are working as clerical workers. So we found considerable sort of underuse of this workforce, which actually is a fairly highly skilled workforce, wherever we took a look at it. These trends are not likely to change — this was the assessment of the committee — unless public and private sector employers and employees are able to constructively rethink their use of this skilled and quite knowledgeable workforce.

1110

More clerical workers are teleworking, and I believe you've heard considerably about some of the experience of people who do this, that is, they work not on the same site as their employer, they often work at home. More clerical workers have two different employment relationships: one with the company that pays their salary and one with the company that directs their work and supervises their work.

The workers who are employed through temporary service agencies are not paid health and pension benefits. More clerical workers are doing the office equivalent of piecework, that is, they're being paid for a telephone call made or a contract made. Most clerical workers are insecure in their present jobs and can expect to change jobs in the near future. Many clerical workers work unpaid overtime hours and are vulnerable to other employment standards violations because of this insecurity.

The revolutionizing of office work is a central target of the information revolution; it's something that we talk

about, and the sort of information economy is something that we talk about quite a lot. How this revolution is done is key to the success of the development of an effective information economy and to the prevention of a human resources and social disaster in this province.

There's a low road, which we saw happening in some offices, which can create, and this is what we're seeing an increasingly contingent, insecure, underutilized workforce, and there's a high road which we see some employers trying to pursue, which could create sustainable productive jobs and consequently a population which can contribute to taxes and to what we often call consumer confidence.

There are definitely some employers, and we found them in our study, who understand that their best interests are in following the latter high road, and when we pursued this discussion in our committee, we felt that this was in fact the kind of both employment relationships and set-of-work practices that we wanted to support and recommend to all levels of policymakers.

The study you have in front of you highlights the best practices that we found in training clerical workers for this new economy, in keeping them in creative jobs, in creating new career paths for information workers and in adjustment programs in situations where layoffs cannot be prevented. The research and the subsequent intense discussion of its implications caused the committee to make recommendations that represent an opposite direction to that which we see outlined in Bill 49.

Our recommendations focus on the modernization of employment standards to meet the needs of workers and employers in a rapidly changing information-based economy. They proposed the strengthening of employment standards, more complete coverage and stronger government enforcement. They're based on a reassessment of the balance of the responsibilities and accountabilities between employers, employees, public education and social welfare systems in an economy where the employment contract is increasingly unstable and where employees no longer have a long-term relationship with one employer or have full-time or full-year employment.

We have concerns about each of the proposals in Bill 49. The study leads us to focus on the bill's proposals to weaken rather than strengthen the capacity of the government to enforce employment standards. Our assessment is that by the creation of minimums and ceilings for claims, forcing employees to choose between the courts and employment standards enforcement, by limiting the time period in which a complaint can be made and privatizing even one aspect of the enforcement of the act, the bill would do two things: It would make it more difficult for this large and vulnerable workforce to make complaints and it would create a penalty that is a competitive disadvantage for employers who make provision for their employees that are beyond the enforceable minimum, those employers who we feel are trying to create the high road, the effective participation of Ontario businesses in this new information economy.

Maureen is going to speak about some of the committee's recommendations.

Ms Maureen Hynes: In speaking about the recommendations, I'd like to stress first of all that the committee

was a very broad committee and had representatives of very large organizations — the Royal Bank was a member, Bell Canada was a member, two temporary employment agencies were members — and we reached consensus among all of us on all of these recommendations. So it represents a broad consensus among very diverse forces having to do with the employment of clerical workers.

The other thing I'd like to just comment on as an overview is that the committee, as Alice has outlined, developed three sets of best practices: one that has to do with best practices in training; one in adjustment issues — what to do with clerical workers when they're facing downsizing or being laid off; and a third for companies to use, whether they're large or small, in assisting clerical workers to develop career paths.

So we developed those sets of best practices. We also developed recommendations in four areas: on the occupation itself and the government's policy development towards the occupation; some recommendations that are related to work redesign and the new employment contract; recommendations that had to do with training; and finally recommendations that had to do with adjustment.

Two of these areas, the areas of work redesign and the new employment contract and the adjustment area, have recommendations that are addressed specifically to the Employment Standards Act, and there are five full recommendations that are directed explicitly to the Employment Standards Act. I'd like to direct your attention, since you have copies, to page 21 of the summary, if you wish, and you can follow along with me as I detail them briefly for you.

Recognizing the high proportion of part-time and contingent workers among the clerical workforce, we stress that employment standards must be changed to ensure that contingent workers enjoy working conditions and benefits equivalent to those who are employed in full-time, full-year jobs.

Are you lost?

The Vice-Chair: We don't have page 21.

Ms Hynes: You don't have page 21?

Mr E.J. Douglas Rollins (Quinte): A clerical problem.

Ms Hynes: A clerical problem is right. You see how the world falls apart when the clerical part isn't attended to? It should be page 21, but you don't have those. We'll provide this to you later; we'll get copies to you.

Let me continue then. That one had to do with ensuring that contingent workers among the clerical workforce enjoy the same kinds of benefits and working conditions as those employed in full-time, full-year jobs.

All employment standards must be adequately enforced. We're really concerned with the enforcement of the Employment Standards Act, and that was our recommendation 8.

The recommendations that had to do with adjustment called for a modernization that recognized that when clerical workers are — when we saw the layoffs and downsizing that affected clerical workers, we saw that they were not laid off in huge numbers, the way you might see in a manufacturing industry. They're laid off rather gradually, in slow increments, and gradually

eliminated by either technological change or restructuring or redesign of the work.

So we made a recommendation that all employers — this had to do with the labour adjustment provisions of the Employment Standards Act around notification — must notify the government if they plan a permanent reduction in the workforce of 50 or more employees, as is in the act now, or 10% or more of the workforce in any six-month period. We've seen over and over in the labour adjustment field employers who will lay off 49 employees, thereby not being required to report to the Ministry of Labour over this.

Another recommendation was around the provision of notice. We recommended that there be a 12-month notice period because people are required to retrain and retool for the new economy.

We have recommendations around severance pay, that severance pay should recognize that all employees have a right to be compensated for irredeemable loss of benefits such as pension credits, salary increments, vacation entitlements and health and welfare benefits. Eligibility for severance pay should be reduced from five years to one or two years.

1120

Finally, the mandate of the labour adjustment office of the employment standards branch should be strengthened, we feel, to include more regular public accounting of reductions in the workforce, with sufficient investigatory powers to ensure enforcement of job protection requirements.

The office should assist by establishing workplace action centres or regional or community-based centres and by developing alternatives to layoffs.

Specifically, we'd like to address ourselves today to our recommendations on Bill 49. We seriously urge this government to drop the proposal for a minimum and maximum ceiling on dollar amounts for claims. We seriously urge this committee to maintain the current time period for complaints, and we also seriously urge this committee to refrain from the privatization of the enforcement of the administration of employment standards.

Finally, just to conclude, we were very interested yesterday when the Bad Boss Stories came out. We hadn't seen this document so we wanted to look through it to see how many were clerical workers. There are several clerical stories in this and I'd just like to outline one. I think you do have this copy, so that's on page 55. This is about a woman who was —

The Vice-Chair: Excuse me for a moment. I ask you to do so briefly, please. We are already over time. I don't mind if you summarize your conclusion when you finish. Thank you.

Ms Hynes: Yes, I will summarize.

This is the story of a woman who was a data entry clerk for a Toronto marketing company. We chose this story because this shows the new kinds of vulnerabilities of clerical workers and the new instabilities in their jobs. She was expected to work from the employer's home entering information into a database. She worked part-time, five days a week, five and a half hours a day. She worked for almost a month and then when she asked for her pay, she was fired.

The company, she felt, owed her \$600 and she tried individually, on her own, to get that money back from her employer. The employer, however, disappeared. It took her a long time to figure out what routes were available to her, but she went to Parkdale Community and Legal Services about nine months later just wanting to know what her legal options were. Finally, she did make a complaint to the Ministry of Labour and now she's waiting for the fact-finding meeting.

Under the new Bill 49, the provision limiting the complaint and investigation periods would completely wipe out her claim. We are concerned about clerical workers, not just in large companies but in situations like these where they are facing new vulnerabilities.

The Vice-Chair: I thank you very much for making your presentation today. We will not have any time for questions.

Ms Hynes: Thank you.

CANADIAN COUNCIL OF GROCERY DISTRIBUTORS

The Vice-Chair: I would ask that the 11:15 be revised. Just that; there's nobody to fill that slot.

I would ask that a member from the Canadian Council of Grocery Distributors please come forward. Good morning. I welcome you to our hearing process here today. I noted that you may have come in after we explained the process. Just to help out a little bit, I would remind you that delegations are here for a 15-minute period. Your presentation can be all of that or it can allow for question and answer at the end, at which time any remaining time within that 15 minutes is divided equally between all three parties. I ask you to introduce yourselves to those present.

Mr Max Roytenberg: Thank you very much. My name is Max Roytenberg and I'm vice-president with the Canadian Council of Grocery Distributors, and I have my colleague — go ahead.

Ms Arlene Lannon: Arlene Lannon, Canadian Council of Grocery Distributors.

Mr Roytenberg: Members of the committee, thank you very much for giving us the time to make a contribution to your deliberations. The Canadian Council of Grocery Distributors represents the bulk of grocery distribution in Canada and has a strong presence, as I'm sure all of you are aware, in the province of Ontario. We are associated with a sister organization called the Retail Council of Canada. They will be making a full brief later on to this committee, a brief with which we associate ourselves, but there was an area that we felt it would be useful to lay before the committee for further discussion. It may not be top-of-mind in that it was not included in the material which has already been distributed to the public, but we believe it deserves some serious consideration as we go forward to complete the work on Bill 49. I'll proceed with a short, written brief and then we'll be available for questions.

The Canadian Council of Grocery Distributors, CCGD, is a non-profit, national trade association representing the interests of the food distribution industry across Canada, with particular emphasis on public policy issues, inter-

sectoral relationships and business development. Among its members are small and large grocery wholesale and retail operations. In addition, there are allied members, persons or companies which provide a wide range of support services to our members and to the industry.

The council's membership represents approximately 85%, more than \$54 billion, of the total sales volume of grocery products distributed in Canada. In Ontario, distributors are responsible for an excess of \$16 billion in grocery sales and the employment of more than 125,000 individuals. In Ontario, CCGD represents A&P, Dominion, Miracle Food Mart, Knob Hill Farms, Lanzarotta Wholesalers, Loeb, Lumsden Brothers, National Grocers, Loblaw's, the Oshawa Group and the subsidiaries of all these companies.

For the last number of years, retail grocery establishments have been committed to open on Sundays. In most cases, this has resulted in a generalized availability of grocery shopping for the public throughout the province. Sunday shopping has become of significant importance because the general public has now made Sunday one of the most active days of grocery shopping in the week. Sunday grocery shopping has become a fixture in the current marketing environment as a consequence of this general public acceptance and support.

When Sunday shopping was introduced, one of the elements of its introduction was the provision that in the grocery service sector, scheduling of employees was based only on voluntary acceptance. This is different from the situation in most other industries. The retail service industry has been singled out from other industries in this area. Most industries schedule employees on a seven-day-week basis in accordance with their particular needs. In some cases, agreements with unions govern the working conditions for employees working on Sundays. Under these arrangements, scheduled employees who accept work assignments on Sunday are required, as a condition of their work, to fulfil their scheduling obligations.

Under current arrangements in the province of Ontario for the grocery industry, scheduling remains voluntary, allowing employees to renege on their agreement to work on the Sunday at the last minute, leaving the employer without sufficient time for replacement. In many cases, employers in the grocery industry in Ontario can find volunteers to fulfil industry needs for serving the public in a satisfactory way. However, because of the voluntary aspect of such scheduling, employers can never be sure that the scheduled employees will indeed appear for the scheduled assignments. Indeed, some employers find that they must overschedule in order to avoid the risk of being left with insufficient personnel to meet the needs of the shopping public.

One of the objections that has been raised in opposition to scheduling Sunday work has been the lost opportunity for employees to avail themselves of Sunday worship. In fact, should this be an important factor provisions could be provided for the assurance of employees that they might be scheduled at hours that would not conflict with this personal requirement.

The most serious problem in this area arises when Sunday coincides with a major holiday. The shopping

public is often most anxious to patronize grocery stores during these periods, at a time when many employees would prefer not to be involved in a work situation. Scheduling problems are most acute at such times when business is called upon to be the most responsive to the public's needs and a significant portion of annual sales are being transacted.

The industry remains bound by its responsibility to respond to the needs of the consuming public in a competitive environment where those who provide the services demanded by consumers will succeed and those who do not will fail. Groceries are now marketed through a variety of channels, some of them significantly removed from the traditional grocery distribution channel, further increasing the competitiveness within the current marketplace.

1130

The grocery distribution industry in Ontario seeks the approval of the government to permit Sunday scheduling of employees in the grocery distribution industry, as is the case for many other industries in this province. Where appropriate, such arrangements could be negotiated with unions within a generally accepted framework. It would be preferable if individual companies could have the ability to negotiate Sunday scheduling terms within their collective agreements.

Mr O'Toole: This is the first time, I believe, in the hearings across the province that we've had this drawn so clearly to our attention. It addresses the whole review of employment standards. The world of work and the demands of the economy are changing such that I would ask you a very general question. Do you believe it's appropriate, in the context not just of your industry but of the broader changing of the world of work, that we review employment standards and other labour legislation?

Mr Roytenberg: It's most appropriate. The world is changing in a most rapid way, and I think it's important that the legislation respond to existing realities. We will present specific positions in that regard, so I don't want to go into that, but yes, in response to your question.

Mr O'Toole: On a broader scale as well, most supporters of the industry that you represent are unionized workplaces?

Mr Roytenberg: That is the case.

Mr O'Toole: In those unionized workplaces today, is it an exemption or, as you say, is it purely voluntary that they agree to be scheduled for Sunday?

Mr Roytenberg: There are negotiated arrangements which touch on Sunday work.

Mr O'Toole: The point I'm trying to get to is that the negotiated workplace arrangement specific to the industry — it's very hard for the province to look at everything from mining to clerical work and make standards that are so universal that they're applicable to all the specific sites. The point I'm making is that the right place to make those decisions is in the workplace, in the industries themselves. Would you agree with that?

Mr Roytenberg: That is what we're suggesting. We understand there is that opportunity for the parties to arrive at arrangements which are appropriate for their particular situations. Right now, with the prohibition in the act, that is not accessible relative to this situation.

Mr O'Toole: If I may get specific, do you pay time and a half or double time, whatever it is, for Sunday or is it just time off in lieu?

Ms Lannon: It really depends from company to company, but generally it's time and a half or premium, and it is voluntary.

Mr O'Toole: Do you use the term — I hate to use the term, but there's no one from either opposition party here, so I can say it without being jumped on: Do you use replacement workers on Sundays?

Ms Lannon: We don't have replacement workers as such, but part-time workers.

Mr O'Toole: Part-time people who maybe only work weekends.

Ms Lannon: Yes, there is a very significant proportion of grocery employees who are part-time.

Mr O'Toole: And students, and you're helping them to —

Ms Lannon: That's correct.

Mr O'Toole: I know a couple of cases where — I'll quote my legislative assistant, Steve Kay, who works for a grocery chain and for me. He works on the weekend for one of the grocery stores, and I can't believe his rate of pay. It's more than what I pay. His rate of pay I believe is \$15 an hour — not overtime.

Ms Lannon: That would depend, because each company has a collective agreement which may differ from company to company.

Mr Roytenberg: And it's affected by seniority.

Mr O'Toole: He's been with them all through high school, he's finished university and he's now working for the people of Ontario, like I am, and he's being well paid in both respects.

Mr Chudleigh: Thank you very much for your presentation, Mr Roytenberg. Having had some experience in the grocery business, it was always my feeling that people who misrepresented their employees in business also conducted their business in other areas with perhaps an equally high-handed attitude and therefore didn't last long in the business. I think of several of my competitors in the Niagara Peninsula who, when I was in the retail food store down there, didn't last long because they didn't treat their employees and their suppliers very well, and perhaps that fell through on to their customers.

By and large, do you find that the grocery industry today is filled with pretty reputable employers, or is there still an undercurrent of people who come and go rather quickly, or is the longevity of the retail operator greater today than it has been in the past?

Mr Roytenberg: There are no barriers to entry in our industry. Anybody who has the resources and the willingness can open up an establishment and present themselves to the public. As you said, those who garner a response from consumers are the ones who last. That is an amalgam of all the things you have to do to be successful. Among those things it has to do with the kinds of employees' reactions and interaction with the public. People whose employees are not happy in their work, who are not being treated in a satisfactory kind of way, are not likely to project to the consuming public the positive attitude that's likely to bring them back. This is more than ever a competitive factor.

We recognize that there may be situations of vulnerable employees and that you may want to consider how that situation is to be resolved; it's not for me to say. But there is a willingness of many people to work on Sunday if work is available. Our problem is that we need to provide it in a framework which will enable us to assure the consuming public that they will properly be served. That's our *raison d'être*.

Mr Rollins: Thanks for your presentation. It has a bit of a different twist to it than we have heard before. Do you have any statistics on the number of people who have had to go to complaints, from your association, the people who have been unjustly used? Do you have any numbers? Do you know if there's a large number, a small number, very few?

Mr Roytenberg: I don't have any knowledge of complaints of that kind. I can't help you in that regard. At the same time, I haven't canvassed for that information.

Mr Rollins: Okay. I was just wondering whether there was a large number. In some industries there are more people who predominantly complain about unfair practices and things of this nature, and I don't feel that in your sector, the people you represent, that happens.

Mr Roytenberg: I cannot assure you that there are no grievances.

Mr Rollins: I'm sure there are always some.

Ms Lannon: I think generally, if that were the case, it would show itself in labour unrest, and at this point within the industry we don't see that.

Mr Jerry J. Ouellette (Oshawa): Are you seeing significant increases in sales over seven days now, because of Sunday shopping, or is it just spread over seven as opposed to having the same amount on six?

Mr Roytenberg: It's hard to make that determination. Sales in general have been advancing in the grocery industry since 1991, when for the first time ever we actually had a decline. What we see is that the share of total sales occurring on Sunday has been increasing, so of all the weekdays there are out there —

Mr Ouellette: People are accommodating for the opening for the opening on Sunday but sales are staying roughly the same.

Mr Roytenberg: They responded in a very positive way. We think it was a plus. We looked at the timing. When this occurred it was our perception that we were actually increasing sales.

Mr Ouellette: Are you having any problems getting managers?

The Vice-Chair: Excuse me, Mr Ouellette; surprisingly enough, we've run out of time. Thank you very much for your presentation here today.

1140

MISSISSAUGA BOARD OF TRADE

The Vice-Chair: I ask that representatives from the Mississauga Board of Trade come forward, please. Good morning. Welcome to our hearing process. For those present in the room it would be very helpful if you would introduce yourselves.

Mr Charles Coles: It's a pleasure for us to be here. We thank you for the opportunity to appear before the committee on this important bill. My name is Charles

Coles. I'm the chairman of the Mississauga Board of Trade. Joining me today are Norman White, who will make the major part of the presentation; George Kairys, a member of our committee; and Jim O'Dell, the chair of the committee.

The Mississauga Board of Trade is a private sector non-profit, volunteer-driven business organization representing some 1,300 companies with over 60,000 employees in Mississauga. Mississauga is Canada's ninth-largest city and, as you know, host to Canada's largest and North America's second-largest airport. As such, the Mississauga Board of Trade is the voice of business in Mississauga, the gateway community to the greater Toronto area.

We are pleased to be able to appear before the standing committee this morning to address certain issues arising from Bill 49, An Act to improve the Employment Standards Act. Our presentation will express our views concerning the enforceability of the act through collective agreements, the prohibition of duplicate proceedings in court and, pursuant to the act, increased flexibility for greater employment standards for employees and other matters addressed in Bill 49.

Mr Norman White, who was a member of our board and the committee, who has more expertise in this area than I have, will make the main part of the presentation.

Mr Norman White: I've been asked to summarize the board's submissions on Bill 49, which in essence is in support of all the provisions of the bill, and there are a number of reasons why we support them. I'd like to address them very briefly and summarize our submissions as follows.

The board of trade supports the initiatives to clarify certain employee entitlements.

First, the board believes it is just and equitable that all employees be entitled to vacation or vacation pay in their first year of employment regardless of any unintentional interruption or absences from work such as illness, pregnancy leave or parental leave.

Second, the board supports those sections of the bill that clarify once and for all the timing of any payments upon termination of employment.

Third, the board supports the initiative to recognize uninterrupted lengths of service which previously had been interrupted by reasons of illness, pregnancy or parental leave. Again, employees should not be prejudiced against for the purposes of calculating their lengths of service for these reasons.

Moving on to the next topic, the board supports the flexibility with respect to the collective bargaining process in permitting bargaining agents to bargain employment standards that, taken as a whole, are superior to any particular employment standard, even though a single employment standard may not be met. We support this for the following reasons: First, we believe that such flexibility meets the demands of a more sophisticated and ever-changing marketplace. Second, we support this initiative because it would decrease the bureaucratic and government costs associated with processing exemption requests. Third, the bill maintains that there's adequate protection for employees since such negotiations would only involve situations of collective bargaining where

employees are represented by accredited bargaining agents.

The next issue is the enforcement of employment standards through the collective bargaining process, in essence replacing the present enforcement procedure, which is run through the employment standards branch. The board is supportive of these changes for the following reasons: First and foremost, resolving disputes concerning employment standards through the collective bargaining process certainly reduces government costs and staffing in that there is no duplication of processing of claims. Second, negotiated collective bargaining processes tend to lead to negotiated dispute resolutions, which involve greater opportunities for settlement and a process that is satisfactory to both parties. Third, employees again are protected in that they are represented by qualified bargaining agents.

The next issue I'd like to address is the board's support for the prohibition of filing disputes both through the court process and through the employment standards branch. The board is strongly supportive of this position for a number of reasons: First and quite obviously, it avoids duplication of claims and clearly reduces government costs. Second, it avoids conflicts between decisions of courts and decisions of employment standards referees. Recent case law has stipulated that decisions in one court or by one employment standards referee may be binding on the other, and that has caused great confusion among the practising bar in this area. Third, the court process has certain advantages in terms of discovery, full production of documents and procedures to enhance settlement that the employment standards dispute resolution system does not presently have. Fourth, processing disputes through the court process tends to discourage frivolous complaints, especially where the claimant may have to pay for the legal costs of the employer to defend such frivolous complaints.

The next issue I'd like to address concerns the sections of the bill regarding the privatization of the collection procedures and greater opportunities for settlement. The board supports these initiatives because clearly they reduce the government cost associated with collection. Second, they increase opportunities for settlement and compromise in certain situations. Third, the bill provides adequate protection for the employee in that no settlement less than 75% of the full amount of the claim could be made without director approval.

Last, I'd like to address the issue concerning the changes to the limitation periods in Bill 49. First, the board supports the initiative to reduce the limitation period from two years to six months for the processing of complaints. There are certain advantages to this initiative. Certainly it encourages the timely filing of complaints. Second, it is consistent with the notion that the filing of complaints through an employment standards system is to be one of a summary nature in that any more sophisticated claims should be done through the court process. Third and again important, it certainly reduces government investigative costs. The board supports the changes to the limitation period concerning the time for appeals for employers by increasing it from 15 days to 45 days,

which we submit is a more reasonable time for employers to consider their options and seek advice.

In conclusion, the Mississauga Board of Trade supports all the proposals of Bill 49, especially where such legislation is designed to decrease government costs, enhance the collective bargaining process and avoid the duplication of claims where dispute resolution systems are mandated in other areas, such as court and in the collective bargaining process. The Mississauga Board of Trade is certainly pleased to assist in any further amendments or changes to the Employment Standards Act, which is an important piece of legislation, and we would welcome any opportunity to address further changes. Thank you very much.

Mr Tascona: Thank you for your presentation. You're a fairly large organization, as you say in your brief: 13,000 companies with 60,000 employees. Do you provide any education or support to your members with respect to understanding the Employment Standards Act?

Mr White: We do in a number of different ways: through various publications that the Mississauga Board of Trade puts out, not just to its members but to the business community in Mississauga at large, and through certain seminars and conferences. Part of our mandate is to keep our members and the business community educated with respect to legislative changes, and we have, with respect to this bill, made attempts to educate them as to the changes that are forthcoming. Once, hopefully, they're put into law we will make further efforts to make sure that our employer members are aware of the changes and the reasons behind them.

Mr Tascona: Apart from changes, though, just a general understanding of the Employment Standards Act: Have you dealt with your members on that through your human resources committee or seminars etc?

Mr White: The human resource committee of the board of trade keeps our members informed about all aspects of human resources on an ongoing basis, including employment standards.

1150

Mr Tascona: I imagine you have some unionized companies within your membership. In the union sector do you find that the unions, in their collective agreements, have negotiated such matters as human rights and occupational health and safety?

Mr Coles: I represent a unionized company, and in our collective agreement we have, particularly with respect to occupational health and safety, a special appendix at the end with health and safety rules and that sort of thing. I don't know if that's general with a lot of companies but it certainly is with ours. We're a fairly big company.

Mr Tascona: The grievance procedure — you have that in your collective agreement — would that involve a complaint with respect to human rights or health and safety under your collective agreement?

Mr Coles: Yes, it would.

Mr Chudleigh: Thank you very much for making a presentation to us this morning. We appreciate it.

I'd like to emphasize your conclusions. You point out that in order to reduce costs and duplications throughout the government process — our government has been involved in that for over a year now. Although there is

much criticism about it, I'm sure that at the end of the day Ontario will be a better province for it.

In the collective agreements that you mentioned, could you tell me, in the grievance periods, how long an employee has to place a grievance before the committee before its time runs out? Are you familiar enough with the contract to point that out?

Mr White: I've assisted in negotiating a number of collective agreements and I don't think there is any standard, but it's probably safe to say that in most collective agreements there's a very short period of time in which an employee can file a grievance, although there are some collective agreements that I've negotiated where there is virtually no time limit with respect to a complaint or maybe a complaint regarding certain sections of the collective agreement.

Mr Chudleigh: By "a short period of time" do you mean six months?

Mr White: No. I'm talking two weeks.

Mr Chudleigh: I see. Two weeks, a very short period of time.

Mr Lalonde: You said you have approximately 60,000 employees. What percentage of them are with organized labour, affiliated with the union?

Mr Coles: That would be very difficult to estimate. I would say that the bulk of our member companies is small businesses that are not organized, but I represent St Lawrence Cement; we're a big member. There are other big companies as well, pharmaceutical companies and so on, but of that 60,000 how many are organized and how many are not I couldn't hazard a guess. Sorry.

Mr Lalonde: If we are going to eliminate a good number of enforcement officers, don't you think that non-organized labour will be left in the dark at times? We know that the most vulnerable people will not lodge a complaint until they find themselves new jobs, because knowing the state of the economy these days, people are going to stay on the job even though they know they are not being treated properly. You say that six months instead of two years as the time allowed is acceptable for the processing of a complaint.

Also, I really feel at this time that the \$10,000 you are able to claim is an amount, especially in today's economy, that is very minimal when you know that some employers these days probably are not following employment standards.

My question is, do you think it is going to be fair for unorganized labour, the fact that we are reducing the number of enforcement officers?

Mr White: I can address that. Yes, we think it's very fair to the employee for a number of reasons. First, I think the intent of the act was to change the employment standards process to one of a summary nature so that smaller complaints of \$10,000 or less could be addressed in a summary fashion.

For amounts in excess of \$10,000, employees, just like anyone else, have a right to go to court to collect it. Any termination pay or severance pay or breach of contract action would have a limitation period, I believe, of six years, so the employee would have adequate time to get a new job and maybe collect the resources to pursue a court action to protect his or her rights. If they are

successful in their claim, they would be compensated for their legal costs, so there already is a mechanism in place for employees who have significant claims.

Mr Lalonde: But even the organized group, the union people, says that Bill 49 will deprive employees of their rights because first they have to go through their union people, they cannot go directly without going through the union, and knowing the cost of a lawyer and the time it will take for the union, they have to hire lawyers to pursue their claim.

The Vice-Chair: The committee thanks you for being here this morning and making a presentation.

Seeing that there are no further delegations before us this morning, we are now recessed until 1 pm.

The committee recessed from 1156 to 1304.

The Vice-Chair: Good afternoon. A quorum has been noted and we can now proceed with this afternoon's proceedings. We welcome you to the hearings on Bill 49, An Act to improve the Employment Standards Act. For those who weren't present this morning, if I could outline how we proceed, there will be a 15-minute allocation for each party here to make a presentation today. That 15 minute will be used as you see fit. If you use 15 for presentation there won't be an opportunity for a question-and-answer period. In the event that there is remaining time, the time will be divided evenly among the three parties.

HUMAN RESOURCES PROFESSIONALS ASSOCIATION OF ONTARIO

The Vice-Chair: For the sake of those present, I'd ask that you introduce yourself, please.

Mr Mike Failes: My name is Mike Failes. With me today is Peter Waite. We represent the Human Resources Professionals Association of Ontario. Mr Waite is the executive director. I am the chair of the provincial government affairs committee.

I'd like to thank you for the opportunity to address you today about the Employment Standards Act reform. We have provided the clerk with a number of copies of our brief. It is a rather extensive brief dealing with our blueprint for reform of the Employment Standards Act as a whole, so I won't be dealing with the entire brief, but in appendix II of that brief, at the very end, there are series of recommendations which we make with respect to the Employment Standards Act reform process which you're dealing with today. You'll find that as you go through those recommendations that there are a number of consistent principles which we're trying to follow.

First, we believe strongly in protecting employees' basic rights. We also believe you have to have specific protection for those who are most in need of it. At the same time, we believe we have to enhance the internal responsibility systems in place in the workplace. Finally, we'd like to simplify the system and, if at all possible, reduce the multiple forums which our members face today.

Before I turn to a few specifics in our package of proposals, just so you understand what our organization is about and who we represent, these are human resources practitioners throughout the province. We have a little over 7,000 members. These are people who on a day-to-

day basis deal with the Employment Standards Act and have to administer it and look after employees' concerns. We are neither an employers' group nor a group representing employees. Rather, we have a unique perspective which we can bring to this reform process.

What I'd like to do is to touch upon a number of areas which we believe strongly should be retained in Bill 49 and then touch upon a couple of areas which we think have to be modified significantly.

Some of the areas which we agree with and approve of include the electronic filing and recordkeeping provisions within the legislation. In some sense I suppose you might say, "Welcome to the 20th century." The provisions dealing with civil actions, once again, we agree with. It's important that the forum which is going to be utilized by the worker be identified. That allows all parties then to deal with one forum. Right now, of course, there are multiple forums which are involved in a variety of employment-related matters, including the Employment Standards Act. This leads to a duplication of process and the potential for employers and our practitioners having to appear in multiple forums.

For example, right now under the legislation, if you are contesting a dismissal based on wilful misconduct, if you do not contest it in front of the employment standards branch, you may be bound by the decision made there in a subsequent court proceeding. Surely it's fair that everybody proceed with simply one forum so everybody knows where the matter is going right from the start.

A third item which we agree with are the provisions with respect to the enforcement of the act through the collective agreement. We appreciate that this has had some controversy in the papers. However, we believe once again that this is going to reduce a multiplicity of forums. It's consistent with the prior government's and of course this government's legislative provision in the Labour Relations Act allowing arbitrators to enforce the Employment Standards Act in a collective agreement arbitration. Some of you may recall that the arbitrators at the time that Bill 7 was coming in were strongly in support of retaining that power, and it was retained in Bill 7.

The only argument against this would appear to be that unions either don't have the expertise or the time or don't care enough about workers to enforce their rights under the legislation. Quite frankly, we'd suggest that's simply not the case. That's not the way unions operate. More than that, there's already existing protection in the Labour Relations Act with respect to workers and their right to be represented fairly by trade unions. I might add that the number of complaints under that section are relatively few and far between, and I think that's largely because unions do a good job of representing their members.

Another area that we specifically want to mention we're in favour of is the provision in the act for allowing for the collection of claims to be in essence farmed out to third parties. This is simply something which you would have thought would have been done a long time ago. Government is simply not in the business of and doesn't have the expertise for conducting debt collection. The mechanism that's been introduced in Bill 49 is one which seems thoughtful, well-thought-out, and will allow

employees who are owed money to obtain that money in an expeditious and reasonable fashion.

1310

There are a couple of areas which we have some concerns with, and I wanted to address those now.

The first is the six-month limitation period contained in the act, coupled with a limit on claims. Let me take this in two parts. First of all, we strongly support and believe in the six-month limitation period. We like the way the legislation specifies now what it means to be brought to the director's attention; that is, you file a written complaint, either in electronic form or otherwise.

The portions of Bill 49 which we have some difficulty with are, first of all, the limit on monetary claims, and let me explain why we have a concern with that. First of all, we don't think there should be a limit. We appreciate there was a \$4,000 limit not so long ago. The government is now suggesting a \$10,000 limit. The rationale appears to be primarily based upon the fact that it takes a lot of resources to deal with expensive claims. There are two problems with that argument.

First of all, the legislation is there to deal with workers' complaints, and if they are properly brought forth within the six-month limitation period, we see no reason why they should have an upper limit put on them which may deprive the employee of an expeditious collection of the money owed.

Secondly, it appears to be a resources argument. It takes resources for the ministry to pursue those claims. It's going to take resources in any event if someone has to go through the court. We have a problem with the court system now. It's backlogged; it takes years. They are now trying to introduce ADR, of course, to resolve that.

It doesn't seem that either of the arguments which are being advanced in support of the monetary limit really merit the problem which employees will be facing if you do it. If you have a six-month limit, the concern with people sitting on their rights will be addressed.

You do need some work, I think, on the language which is used dealing with the limitation on recurring violations. There is a drafting issue, I'd suggest, which needs to be addressed within the legislation. But quite apart from the drafting concern, the legislation appears to impose what I think is a 12-month limit on going back on recurring claims. In general, we don't see why the two-year limit, which currently exists on how far you can go back on a recurring claim, shouldn't be there. The key thing is that a person has to bring it forward within six months. So you have that six-month period, and then if they've brought it forward, it may allow someone to go back further in terms of looking at a recurring claim.

The other area that we have some concerns with is the service of orders. The legislation would change the current system. Currently, if you're going to serve an order, for example, on an employer, before you go and enforce it you must either serve it personally or by registered mail. That means the employer has to receive it. Well, the branch has chosen to simply ignore what's in the legislation, and that's probably why you see this amendment being put forward. If you read the branch's policy manual, they say: "Well, that's all very well and

good. That's what it says, but you know, we have a hard time serving people sometimes, so as long as you've sent it by mail, that's good enough." In fact, they make reference to the rules of civil procedure, which of course have no application.

This amendment appears to be directed at helping the branch out with a problem. Unfortunately, they have simply taken the easiest route out. They don't recognize that people have legitimate concerns in terms of being served properly with these orders. You can address the branch's concern. The branch's concern is: "Well, what if we can't serve somebody? We send it out by registered mail and it comes back undelivered. What if we try to personally serve them but we can't find them?"

The answer is that if you try that, if you make an attempt at service which is reasonable, either by registered mail or personal, then you can go ahead and enforce, but that the person against whom you are seeking enforcement shall have a reasonable period of time — I'd suggest the old 15 days is just fine — within which they can come forward and say: "Hey, I do object. I never received a copy of this order." That will avoid a situation such as one which I saw recently where they sent it by registered mail, it got returned as undelivered and they proceeded to enforce an order of \$30,000 against an employer. The day after he found out they had deducted it from his bank account, he went down and tried to file an appeal. They said: "Sorry. You're outside of 15 days." It took them, in fact, three or four months before they enforced it. The only recourse he had, even though the legislation right now would support his argument, would have been to go for a judicial review of that decision and it simply was not feasible in that case because, frankly, he owed a good portion of that order. He was really only going to contest about half of that order and a judicial review application would take up virtually all of that money, so there was little value in him even trying to contest that.

Rather than taking the easy way out, which has been suggested by the branch, we suggest let's amend the legislation properly so that if you do have difficulties in serving somebody, you can go ahead and commence enforcement proceedings but their rights are still protected.

Those are the comments we wanted to provide you with today. I appreciate time is short so if you have any questions, I'd be more than happy to try to address them for you.

The Vice-Chair: We thank you for your presentation. We have just over one minute per caucus, starting with the official opposition.

Mr Hoy: Thank you for your presentation this afternoon. I had some experience with sending registered mail prior to being elected in June. You can send registered mail but you can't make people read it. That was a flaw we found in a previous life. You talked about the six-month period and we've had presentations from people who say that, in the main, they quit working for that employer before they opened a claim. Almost 90% of the people do that. Human nature being what it is and the unemployment levels being high, it causes them concern that they should — they want to find other employment

before they open a claim. In that you have represented both employers and employees in this area, are you still fixated on the six-month period?

Mr Failes: Yes, let me tell you why. First of all, probably the area which causes the greatest concern with the six-month period are things like terminations of employment because what happens is records disappear, recollections fade, people who worked at the company move on. It is a period of time — if you've been discharged from employment or laid off, surely that's a reasonable period of time to come forward and that argument which has been made to you doesn't even address that concern. So, if you start off with termination of employment, there's absolutely no reason why someone shouldn't bring it within six months.

The concern which is being raised: "Well, what about something like a claim for vacation pay or a claim for overtime? I don't want to do that while I'm an employee." First of all, there's already a protection in the act. If someone has their employment adversely affected because of seeking to enforce a claim, that's a violation of the act and can be subject to prosecution.

Secondly, yes, there is going to be some tradeoff any time you have a limitation period. On one hand, you are weighing the employer's right to be advised of a concern within a reasonable time, on the other hand, an employee's right, if you will, to I guess wait until they have something lined up. The vast majority of these claims, though, if you take away the severance and termination and pregnancy leave claims, you're dealing primarily with small claims or moderate amounts of money.

I'd suggest it's very unlikely that many employees actually quit their employment because they want to enforce the violation of the act. It may be that many of them don't do it until after they've quit their employment, but, once again, there's a tradeoff there and the six-month period, frankly — it's not six days; it's not six weeks. It's a reasonable period of time with which somebody can think over whether they wish to advance a claim or not. I'm not sure there's any right period of time but that's one which is frequently used — the Human Rights Code as well.

Mr Christopherson: Thanks for your presentation, it was very thoughtful. Obviously you put a lot of work into it and it's appreciated. On page 4, just to repeat one of your principles, "The legislation should enhance" — should enhance — "the protection of employees, with particular emphasis on protecting Ontario's most vulnerable workers." I would suggest to you that would likely include people who are making minimum wage, do not have union representation, and could be working for some of the bad bosses, not the best places in the world to be working, and I would think that would be applicable. You didn't comment, at least I didn't hear your comment, on the issue of a minimum threshold that the government is introducing, recognizing they won't tell you what that is going to be.

Mr Failes: Let me be clear just on that point. When talked about the maximum, the same goes for the minimum. There shouldn't be any thresholds on the claims. If you've got a claim, you're entitled to have it enforced. It's as simple as that.

1320

Mr Christopherson: That's fine. No, that's what I wanted to clarify.

Mr Failes: But that really works hand in hand with a six-month limitation period.

Mr Christopherson: I want to pursue that a little bit with you. Hopefully, I have a little bit of time. Given the fact that 90% of all claims are made after people leave employment, based on that statistical fact and the submissions that we've heard all across Ontario, there are clearly circumstances where people are fearful of retribution, and the fact that you can make a claim in the ministry does not solve the fact that you've lost your job, because there's no just-cause clause in the Employment Standards Act as there is in virtually every collective agreement. You can't fire somebody without cause; if you can't prove the cause and you've fired them, they get put back into work usually with full retro benefits.

The Vice-Chair: Mr Christopherson, I'm sorry. We've again exceeded the time. I do apologize.

Mr Tascona: Thank you for your presentation. Your organization is very active in the education of its members with respect to legislation such as the Employment Standards Act?

Mr Failes: Yes, it is, very. Actually, seminars are held annually, if not biannually, on just the act.

Mr Tascona: In your experience, has it been that unions negotiate provisions such as in their collective agreements for human rights and health and safety?

Mr Failes: There are invariably provisions with respect to health and safety, the extent of which vary. Human rights: You'll frequently find provisions but not necessarily all the time because now — for example, Bill 40, now Bill 7 — arbitrators are explicitly authorized to enforce other pieces of employment-related legislation; you don't have to have a specific provision. They can enforce it anyway.

Mr Tascona: And that can be enforced through the grievance procedure?

Mr Failes: Absolutely, right through to arbitration, of course.

Mr Tascona: And the grievance procedures, generally the time limits — what do you find? They range from 15 to 30 days to file your initial grievance?

Mr Failes: Yes. Generally fairly short.

The Vice-Chair: I thank you for your questioning. Thank you very much for making your presentation today and welcome back another time as well.

UNION OF INJURED WORKERS OF ONTARIO INC

The Vice-Chair: I would ask that the representatives of the Union of Injured Workers of Ontario come forward, please. Good afternoon and welcome to our hearing process. I would ask you, for the sake of those present, to introduce yourself, please.

Mr Phil Biggin: My name is Phil Biggin. I'm the executive director of the Union of Injured Workers of Ontario. With me is Carmine Tiano, a community legal worker, and Maurice Stewart, a community legal worker with our organization.

The Union of Injured Workers of Ontario welcomes the opportunity to provide a written submission and to appear before the Ontario Legislature's standing committee on resources development to make an oral presentation on the review of Bill 49.

The Union of Injured Workers is a non-profit community clinic with a mandate to represent injured workers on workers' compensation issues and to lobby for changes to labour legislation that affects the rights of injured workers and workers in general. We also represent workers in other areas such as unemployment insurance appeals, Canada pension, representation before the Social Assistance Review Board and assistance in employment standards claims.

As worker representatives, we view Bill 49 as another assault on workers' rights. The Minister of Labour, in introducing this bill, called the legislative changes minor housekeeping. We submit that the proposed amendments are not minor housekeeping but major changes that will have significant negative impact on the substantive rights of Ontario workers. We submit that in particular injured workers, the most vulnerable, will bear the brunt of this assault. We also submit that Bill 49 is a gift to the employers who violate the Employment Standards Act with very limited accountability.

Since this government took office in June 1995, it has introduced some of the most anti-worker legislation in almost 50 years. It is interesting and important to mention that most of the proposed or approved legislation to date is a mirror image of similar legislation passed from the Republican-run Congress across the border, a Congress that in recent months has become very unpopular and viewed as being uncaring and mean-spirited.

In both Ontario and the United States, the justification for regressive labour legislation is that present legislation is killing jobs and investments and creating an unfavourable environment for business.

The US Congress: In 1995, the Congress cut occupational health and safety administration by 2% after first proposing a 30% cut. It cut inspection funds by 10%, cutting inspections of hazardous workplaces. In Ontario, in September 1995, the government announced plans to dismantle the Workplace Health and Safety Agency. It was suggested that health and safety delivery organizations be sector-based, which would eliminate the Workers' Health and Safety Centre, and further, that complete responsibility for health and safety training be made the exclusive purview of employers. At the same time, it was made public that the government was planning on reducing the number of health and safety inspectors.

Congress's view on labour: Congress wants to kill overtime pay. They want to replace it with comp time. The present bill, HR 2391, would let workers get comp time, but not cash.

Not content with cutting overtime pay, Congress wants to make it harder to get overtime at all by abolishing the 40-hour workweek.

Bill 7, the Labour Relations and Employment Law Amendment Act, was introduced in October 1995, repealing Bill 40, the NDP's labour bill. It introduced far-reaching changes above and beyond the repeal of Bill 40. There is no need to rehash old memories.

Finally, Bill 15, the changes to the Workers' Compensation Act, was quite a draconian bill that introduced criminalization of the Workers' Compensation Act and made economic recovery of overpayments a priority over injured workers' benefits.

In 1996, this government has once again embarked on further eroding progressive legislation meant to help the working people of this province. As mentioned earlier in our presentation, we feel that the proposed changes are for the benefit of big business and its employer allies.

Our objective today is threefold: (1) to show how Bill 49 will affect Ontario workers; (2) to show how Bill 49 will affect injured workers and (3) to show what we feel would be meaningful improvements to the Employment Standards Act in order to make it effective labour legislation that is fair to both employers and workers in Ontario.

Mr Carmine Tiano: Good afternoon. My name is Carmine Tiano and I'll be giving the committee our views on how Bill 49 will affect workers in this province.

First, we feel that this bill will take away minimum employment standards. Bill 49 allows employers and unions to negotiate standards for hours of work, public holidays, overtime pay and severance pay that are lower than current minimum standards, a feature that this government calls flexibility. We acknowledge that in the last little while the Minister of Labour backed off on this somewhat. However, it has been mentioned that this proposal will come forth again once the government reviews employment standards later on this fall.

We feel that this idea of negotiating minimum standards is to the detriment of 80% of the workers in this province who are not covered by collective agreements. Basically, 80% of the workforce will not have the benefit of a collective agreement or union to fight for them. Employers arbitrarily could just implement certain reductions and minimum standards.

Secondly, we're opposed to the idea of shorter times for claims and investigation against employers. Bill 49 reduces the time for workers to file claims from the present two years to six months. Also Ministry of Labour investigations will be reduced from two years to six months. As has been mentioned today, a lot of workers do not file claims until they leave employment for fear of reprisal, for fear of being fired. What this limitation does is it's going to put a worker in a bad position. "Do I file a claim against my employer who's violating my rights and maybe be fired, or do I just keep my mouth shut and keep my job?" I think it's unfair, especially in a province like Ontario; the workers will have no protection in that sense.

Furthermore, we're opposed to the \$10,000 limit. The maximum amount you can get under an employment standards claim is \$10,000. This is a further blow. Basically, what this is doing is it's telling the employers in this province, "Well, I could violate my duty and the most I'll be accountable for is \$10,000."

Even the lowest workers in this province — garment workers, factory workers — have had claims more than \$10,000. I think it's unfair for the government to put a monetary award on how much someone should be awarded.

Our other concern, as legal workers, is that the ministry is forcing workers to choose. It's either you get recourse under the Employment Standards Act or you get recourse in common law. I feel that's unfair because at times the workers should have both opportunities. At the same time when they're being asked to choose, the government is putting limits on legal aid. "If you choose to go into the courts, we won't give you legal aid for a lawyer." I do not think that's fair; I think it's unfair. It's further reinforcing this idea that employers in this province right now can do basically whatever they want and there are no limits.

1330

We're also opposed to the collection of settlements. As we've seen in workers' compensation, for years private consultants have been assisting injured workers in their claims and ripping them off, taking awards. This is similar to that. If a private collection agency is given the power to go in and retrieve this money, they'll settle quickly so they'll get paid. It shouldn't be like that. I think that should remain in government hands.

Another thing that has come to mind with this legislation is that Bill 49 does not take into account how an injured worker will be affected by these changes. The biggest effect is the six-month waiting period. Right now, if an injured worker is hurt, he puts in an appeal. An appeal takes between nine and 12 months to be heard. If his appeal is successful and he does get his benefits, if he or she finds out that there could have been an employment standards action brought against the employer, he can't do it because of the six-month waiting period. This is something that will hurt injured workers when they're appealing re-employment issues. That's something I think the government should think out, because it will really be to the detriment of the injured worker.

I'll take it over to Maurice Stewart.

Mr Maurice Stewart: I have the pleasure of suggesting what we consider to be some meaningful improvements to the Employment Standards Act. We submit the following as meaningful improvements.

We agree that the present act is weak and obsolete. We propose that it be strengthened by including certain basic employment rights that are currently not in the act itself.

The right to have a coffee break. Unfortunately, the present law only requires employers to give workers at least a half-hour break after they continuously work for five hours.

The right of workers to receive pay for sick days. The current law does not require employers to pay workers who become sick. Unless the worker is employed by a company whose benefit package includes a certain number of sick days with pay, he or she is dead out of luck.

The right to periodic pay increases: I met a man in London, Ontario, this week who told me that in five years now he has not had a pay increase. It so happens he works for a family-owned business. This should not be. The law only guarantees workers the minimum wage. Anything more is at the employer's discretion. The fact is that there are some employers out there who do not have any discretion. An employee could work for an employer for 20 years or more without getting a pay

increase, as long as he or she is being paid the minimum wage.

Every worker should be entitled to the same employment rights and protection, irrespective of their job or age.

We also submit that the present minimum wage should be increased by at least a dollar so that no worker will earn an income below the provincial poverty line.

We also endorse more paid holidays, three weeks' vacation time after five years, just like other provinces.

Overtime pay after eight hours a day and a 40-hour work week, rather than after 44 hours.

We also endorse reducing the maximum hours after which workers can refuse work from 48 hours to 40 hours.

As far as injured workers are concerned, we submit that companies with more than 20 workers should reserve 5% of the jobs for injured workers. This is a fact that works very well in Germany.

That injured workers have the option of full compensation if he or she returns to work and finds that the injury is aggravated.

A stipulation that injured workers will not be subjected to first layoffs.

Secondly, we advocate stronger enforcement of the act, with the Ministry of Labour expanding its collection role rather than delegating this to private, profit-centred collection agencies.

Mr Biggin: We are strongly committed to government policies that foster a strong economy for Ontario, an economy in which both workers and employers are winners. We don't want to see a situation where our economy is brought down, as one columnist in the *Star* said, to the level of a southern state such as Alabama. This is not the kind of thing that we want to see. We've fought hard on behalf of injured workers and other workers for many years. We want to see a strong economy, a healthy economy where all the people of Ontario are benefiting.

Subject to any questions the panel may have, this completes our submission. We thank you for the opportunity to present it.

The Vice-Chair: Thank you very much. We have one minute and a half remaining in the time allocated for your presentation today. Therefore I would ask that if a comment is to be made, perhaps that's the way we should approach this, seeing as there won't be time to answer a question, I doubt, in that period of time. However, we would like to start with the third party.

Mr Christopherson: Thank you very much for your presentation. I think it was good that you pointed out what's happening in the United States, because many presenters have been talking about the fact that Bill 49 is just one more step in the race to the bottom, as employers and governments all across North America are racing to see who can have the lowest standards, the lowest wages and the lowest protection, and compete that way. I think you make that case.

The other thing I want to do, given that the time is very short, is to point out to the government, and I'm sure they're aware of it, that there was a news conference held just a couple of hours ago with Mr Donner, who's

a well-known economist, headed up a federal task force, and Mayor Barbara Hall of Toronto, endorsing 32 Hours: Action for Full Employment, a process to review the Employment Standards Act in a meaningful way that really would put more enhanced protection in law for workers, not Bill 49, which is taking away rights from workers, as we've heard in every community across the province of Ontario. It would be good to hear today from the parliamentary assistant that indeed the recommendations such as we've heard from the injured workers and from the 32 Hours: Action for Full Employment people — that their ideas will be part of your consideration too and that you really will look at making improvements for workers, rather than the continuing attack that we've seen.

The Vice-Chair: Thank you very much, Mr Christopherson. I'm sure you're aware you've crossed over the 30-second line.

Mr Rollins: Thank you, gentlemen, for your presentation. I have some disagreements with some of the things you are putting forth. You seem to think that Ontario is following the United States and it's going to be a terrible situation. However, the employment rate in the United States is very envious to the province of Ontario. I would think, at least on this party's part, that we would like to see a labour rate of somewhere around 5.1%. That's what the current economic statement is from the States now, that that's the number of people there working. You also are holding us against the States that we're worse off. How come their economy is growing so well and they're seemingly much further down the road than we are, to the better side, I might say? I know this does not give you an opportunity to answer a lot of these questions, but those are the parts that we as a government feel, on my behalf.

Mr Lalonde: On page 5 you mention, "Workers know that they may be fired if they complain to the ministry." We all know that and we also say that 90% of the employees don't put a claim until they have left their jobs. What's your position on this? If the government were to train properly their enforcement officers and keep them in place — at the present time I would say it's not because those enforcement officers were not doing their jobs; it's because they didn't get the proper training. Would it help the people of this province if the government would keep those 45 people and train them properly so they would follow up on a complaint lodged to the Ministry of Labour?

Mr Tiano: If the government would first keep them and retrain them, I think it would go a long way in solving the problem. I don't think we need more laws. All I would suggest is keep the laws we have; just enforce them. Every time a government comes in, it goes about changing legislation. If we just enforced it, it might work. I think education is important in all aspects and if it takes training employment standards officers more, WCB adjudicators, let's do it.

1340

Mr Lalonde: So all we have to do is enforce whatever we have in place.

Mr Tiano: Enforce what we have, more training and cooperation from all parties will go a long way.

Mr Biggin: One last comment, and commenting on Mr Rollins, if your government is using the United States as a model, then I would ask you to go down and visit the urban centres of the United States and look at what's really happening there, if you want to have a polarized society in which there are rich and poor. This is not the Ontario of Bill Davis; this isn't the Ontario of Bob Rae; it isn't the Ontario of David Peterson. But this seems to be the Ontario that you want to have, a polarized society.

Mr Rollins: Too many people are on unemployment.

Mr Biggin: We want as full employment as you can reach, but we don't want to see a society in which there are two groups of people, the very rich and large groups of the very poor, and that's what you've got in the United States.

The Vice-Chair: Thank you very much, sir, for your presentation this afternoon.

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES

The Vice-Chair: I would ask that representatives from the Ontario district council of the Union of Needletrades, Industrial and Textile Employees come forward, please. If you would like to introduce yourselves to the panel and to those present in the room, we would appreciate that, for the sake of Hansard.

Ms Alexandra Dagg: Is my microphone working properly? Yes, we're going to introduce ourselves in just one minute.

Welcome to UNITE's presentation of our sweatshop fashion show. We wanted to point out that we're a little bit behind the times today, though, because we are modelling summer of 1996, but we want to make today a very serious point about employment standards legislation. Of course, if this were a real fashion show, we would have a runway down here and we'd have nice music too, but we'll make do today without all those extra props. But it's important for us to be here today and show you graphically what's happening to the women to sew the clothes in the Toronto area, and it's especially important since the Minister of Labour, Elizabeth Witmer, has said on more than one occasion that she's very concerned about trying to protect garment workers.

Well, Bill 49 certainly does not do that and in fact it will only help to create more sweatshops here in Ontario.

Interjection.

Ms Dagg: I'm Alex Dagg, manager of the Ontario district council of UNITE.

Ms Harwant Singh: My name is Harwant Singh. I was a sewing machine operator, but now I'm working with unemployed workers.

Ms Yin Ping He: My name is Yin Ping He. I'm a sewing operator working at Riviera.

Ms Dagg: Ping sews on men's pants at a large factory in Toronto with more than 100 workers. She's a piece-worker and she's very good. She makes on average about \$10 an hour, plus benefits, and her employer contributes to an RRSP as well.

Harwant was a sewing machine operator, sewing garments for a British-owned company in Toronto primarily sold at Marks and Spencer. She used to earn around \$9

an hour plus drug and dental benefits, but this factory laid off all the sewing machine operators and now uses lower-priced contractors in the Scarborough area.

The clothes that we are modelling here today were made in Toronto but not under the kind of working conditions that Ping enjoys or that Harwant used to enjoy. In many cases, the clothes that the three of us are wearing right now were made by workers earning less than minimum wage.

The clothes were purchased this summer at the Northern Reflections store at the Scarborough Town Centre. The Northern Reflections, Northern Traditions and Northern Getaway stores and labels are owned by Woolworth Canada, a division of the US-based company Woolworth. Woolworth Canada does not own any manufacturing facilities. They contract their production all over the world and in Toronto. In Toronto they send out work to at least eight different sewing contractors who produce clothing in small factories, and some of them contract directly to home workers. The two loons of the Northern Reflections labels, which are popular here in Canada, are known by Toronto home workers to pay unfairly low piecework rates. Experienced home workers sewing these garments typically earn between \$4.50 and \$6.50 an hour. The legal minimum wage for home workers is \$7.37 per hour.

They also contract to sweatshops in Toronto. These are factories in the Toronto area. Fay, which is not her real name, is a highly skilled sewing machine operator. She recently worked at a contractor's in Scarborough with six other women in the Chinese community. She sewed denim vests, just like this one that I'm wearing today, for Northern Getaway. Over a three-week period she earned only \$4.50 per hour. That's in a factory. This is 65% of the legal minimum wage.

First, we're going to look at Ping. Ping is wearing a lovely vest and matching shorts. The vest retails for \$29.50.

The Vice-Chair: Excuse me just a moment. I appreciate the presentation you're making. However, props are not a part of the parliamentary procedure normally used in the House. I would ask that the signs be removed or put down and I would be pleased to have you continue.

Ms Dagg: Maybe you could give us a little latitude here. I understand about the rule of props, but these are not protest signs; these are something to aid us in our presentation, like an overhead for at an employer doing an overhead presentation. To me this isn't any different. We're trying to make a point about how much the clothes retailed for and how much the workers earned. To me this is just a way of making the presentation a little more visible for you.

The Vice-Chair: May I please just ask the indulgence of the committee members in such a thing.

Mr Christopherson: That's fair.

Mr O'Toole: No objections.

Ms Dagg: Thank you. I really appreciate your indulgence. I know it's a little unusual.

Ping is wearing a lovely vest today and matching shorts. The vest retailed for \$29.50, the shorts for \$29.95. The total retail price, as you see, is \$59.45. This outfit that Ping is wearing was made by a home worker in

Toronto. She was paid a piece rate of \$2.20 to sew the complete vest and \$2.32 to sew the shorts. The total sewing cost for these two pieces is \$4.52, earning the home worker \$5.40 per hour for the outfit that Ping is wearing.

Harwant's shorts set was made in a contracting factory here in Toronto. The shorts sold for \$21.95 and the T-shirt for \$19.95. A factory worker was paid a piece rate of 92 cents to sew the shorts and 56 cents to sew the T-shirt; total labour costs, \$1.48. The worker earned only \$5.50 per hour to sew these garments. She was not given minimum wage even though she's entitled to that under the law.

Myself, I'm wearing this dress that retailed for \$54.95 and this denim jacket that retailed for \$22.95. A home worker also made my dress and she was probably paid \$4.40 piecework to sew the dress. Why I said "probably" is home workers are receiving different piece rates for the same garment. The woman who made the jacket in the factory was paid \$2.37 to sew this jacket. The home worker never earned more than \$5.50 an hour to sew this dress and the factory worker made \$4.50 an hour on the jacket. The total labour cost of this outfit, \$6.77; the worker never earned more than \$5.50 an hour.

Our point that we're making is that the Employment Standards Act is not enforced already. We have home workers earning less than minimum wage and we have factory workers in sweatshops also earning less than minimum wage. There's absolutely nothing in Bill 49 that will help us, even though the minister says it will, and we honestly don't understand how she can say this. Bill 49 does not reduce our vulnerability. It does not help us get justice for garment workers. It makes it even more difficult than ever before to launch a complaint.

1350

You will see that we have given you a brief today and in the brief we have our opinions and recommendations about the changes to the act. We're not going to go through all of them but just highlight a few of the most problematic areas of Bill 49. For us, one of them is the minimum-maximum claim provision. The other is the six-month time limit on filing a complaint.

Many workers are already afraid to come forward with complaints. They fear losing their job. Workers need to be protected. In our experience complaints do not come forward until the worker has already lost her job and so she has nothing more to lose. Putting a time limit of six months is a gift to the employer and she will never be able to seek all the back pay she's entitled to. Minimum-maximum claims also mean that it pays for an employer to be unscrupulous. They might as well break the law because there are no real penalties and chances are that they'll never get caught or that the law will never be enforced.

Bill 49, rather than reversing the sweatshop trend that's already happening in Ontario, will just escalate what's already happening. All of us will be wearing more clothes like the ones we're wearing today because the legitimate employers who are trying to abide by the law are continually undercut by the ones breaking the law and will go out of business in this race to the bottom. Ping won't be able to earn \$10 an hour any more and she won't be

contributing to the tax base of the province as much as she is now; she'll be earning less. Harwant will be very busy, though. She'll be very busy working with the unemployed members from the legitimate employers she's already working with now. Bill 49 will return us to the 1930s in Ontario when sweatshops predominated on Spadina Avenue. If this bill is passed and we continue to go in this direction, we really believe this will be a shameful chapter in the history of Ontario.

That's our presentation. I understand you need to ask us some questions.

Mr Baird: Thank you very much for your presentation. We appreciate to learn more. It's particularly shocking when we look at the final retail price versus what wage is paid for the construction of it. We also appreciated the submission by UNITE in our earlier hearings. Many of the issues you've described are obviously ones I know the minister sees as particularly important. I know she's met with your group in the past and with related groups on a number of occasions over the last 12 months.

I think more than anything, though, what it points out is the fact that the current act isn't serving anyone well, but probably no one less so than your industry in Metropolitan Toronto. I had occasion to watch a documentary I think you participated in. They had an employment standards officer and they went on the road with her, with you and with some others. It points to the need to modernize the act. The act was written in 1974 and clearly needs a thorough overhaul, which we've already begun consultations on over the next eight months. I appreciate your presentation and certainly we've learned a tremendous amount from it.

Ms Dagg: If I can just add a point, I'm glad that we can agree that the act isn't working very well. We're just concerned, though, that in the direction you're showing under Bill 49, in the review of the act we're going to have more of the same and we're going to not have the same kind of standards we have now. We're really concerned about making sure that in Ontario we have a minimum floor for working conditions and so that people are not competing on wages and by breaking the law but on other things — on their products, on their design capability — but that's not happening right now to a large degree.

Mr Baird: Your point is very well taken, particularly not just what the act says but how can we better enforce it. The city of Toronto released a report about two weeks ago that said one out of four workers is working at home. Clearly, that wasn't the case in as large a number as in 1974. We've got to find not just better ways to improve the act but to improve the way it's administered. The previous presenters said if we could just enforce it in a better way that would be half the battle.

Ms Dagg: You could also start by not moving ahead with Bill 49. That would show us that you're listening to people.

Mr Lalonde: Thank you for your presentation. Very quickly, did any of the employees ever launch a complaint to the ministry?

Ms Dagg: Yes. We have had home workers launch a complaint to the employment standards branch and

unfortunately our experience hasn't been too positive. That's why a lot more of them don't come forward, when they watch what happens to people who do bring forward. We have a major complaint, over \$10,000 in back wages for a home worker not paid minimum wage. It took the employment standards officer two years to write a report denying every single allegation that the home worker made and finding completely in favour of the employer. That case is being appealed. We had our first day of hearing in the spring, and you know when we've got our next days of hearings? It's in January. By the time this is finished it's going to be three to four years after the incident occurred. That doesn't exactly give a very good picture to other workers who want to come forward with complaints if that's the process that happens. We've been able to support this woman. Think about the people who are completely on their own and do not have support to help them.

Mr Lalonde: It's really unacceptable. I think you should go directly to the minister with this issue.

Ms Dagg: I met with her yesterday and we actually did talk to her about some of these things. I'm hoping the government will listen to us and hear what we have to say.

Mr Howard Hampton (Rainy River): I have a couple of things I'd like you to respond to. The government calls this An Act to improve the Employment Standards Act. I'm going to ask you about that. I see this act as essentially an insult to workers and an insult especially to workers like yourselves, mainly women and mainly employed under some very tough working conditions already.

Mr O'Toole: Why didn't you change it?

Mr Hampton: One of the Conservative members, if you're so proud of this, you'll have your chance, you'll have your time to defend it. If you think driving wages to the bottom, if you think creating two societies, one where some people are very rich — and your tax cut is doing that — and then picking on women and forcing their wages down, is the way to the future, you've got another thought coming in three years, my friend.

The government says this is An Act to improve the Employment Standards Act. Do you see anything here that's an improvement?

Ms Dagg: The thing we find the most difficult is the very title the government has used to bring forward amendments that actually go and hurt more and more of the kind of people it's actually saying it's trying to protect. We're very upset about Bill 49 generally and we're very concerned about the future trends and the future directions the government is moving in.

To call changes under Bill 49 an improvement — it would be better if it would be more clear that it's an improvement for employers who want to break the law, and not even the decent employers, but the illegitimate employers. They're the ones that are going to benefit from this law, because they're going to have all these free gifts because they're never going to be enforced. With the time limit period of six months, they might as well break the law for two years, because if there's ever a judgement it will only be enforced for six months.

The Vice-Chair: Thank you very much for coming forward this afternoon. By the way, I would like to congratulate the group for the presentation they've made. Questions were asked of me as to how this might be handled. I think you've done an excellent proposal the way you've presented it.

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

The Vice-Chair: I would ask the representative from the Automotive Parts Manufacturers' Association to come forward, please.

Mr Ken MacDonald: My name is Ken MacDonald. I'm pleased to have this opportunity to speak today on behalf of automotive parts manufacturers in Canada. Our association represents an industry that employs a little over 90,000 people, most of whom work in Ontario. Our members produce, largely on a just-in-time basis, the parts and materials used in the manufacture of cars and trucks. Most of that production is exported to the US, where Michigan, Ohio and some other states are our biggest competitors.

We believe that if the Big Three auto makers and the parts makers are to maintain their very considerable investments in Ontario, it's important that our employment laws be made more relevant to today's workplace and that flexibility be enhanced. These being two of the goals of Bill 49, we applaud this progressive piece of legislation. We are particularly glad to see the provision that requires non-unionized employees pursuing a claim to choose between the courts and the ministry, and the provision that requires unionized employees' claims to be dealt with through an existing grievance procedure under collective agreements. Bill 49, however, is but a first step in employment standards reform, and we encourage the government to be foresighted and courageous in phase 2 reforms.

1400

We have one suggestion for fine-tuning Bill 49. Drop subsection 82.1(4), which is on page 14 of the bill, which says that the two-year limitation period for proceedings under the act shall not apply to an arbitration under a collective agreement. Otherwise, this provision would create an advantage for unionized employees that is unfair and perhaps unconstitutional, given that many occupations are barred from collective bargaining under the Labour Relations Act.

In closing, my main point is that the auto parts makers are pleased to see that the government is now addressing the need for employment standards legislation reform, a very worthwhile initiative. Those are my remarks.

The Vice-Chair: Thank you very much. We have approximately 13 minutes left, so why don't we maybe try it at four minutes and a bit each, starting with the official opposition.

Mr Hoy: Good afternoon, and thank you for your presentation. You discussed the just-in-time delivery basis that the automotive industry is currently in, and you're talking about flexibility. My estimation is that a lot of this type of discussion will come in the second phase of what the minister is perhaps going to propose. Notwith-

standing that, though, would you agree that it might have been better to have this first phase and the second phase dealt with all at once so that we could see the total agenda that the government has as it applies to labour relations?

Mr MacDonald: We really haven't taken a position on whether or not phase 1 and phase 2 might have been better combined. I can't see a clear case made for either side.

Mr Hoy: We have a view within our party that it might have been better to have these consultations all at once, with both phases of the discussion clearly before all participants. However, the government has chosen to do otherwise. You're asking the government to be foresighted and courageous in their next reforms. Real courage would have been to put phase 1 and phase 2 together and let us see them all at once.

I take note of your two-year limitation period and the comment you make; it's the only specific one to the bill. I appreciate your comments today.

Mr Christopherson: Thank you for your presentation. Before I move to Bill 49 specifically, I would like to ask you about the first sentence in your second paragraph, wherein you say, "We believe that if the Big Three auto makers and the parts makers are to maintain their very considerable investments in Ontario, it is important that our employment laws be made more relevant to today's workplace and that their flexibility be enhanced."

I'm curious as to how you feel you can make that statement or argue it, given that under Bill 40, even prior to Bill 7, which is now the law, which revoked all of Bill 40 and indeed rolled back other rights that unions had that the government didn't even talk about in the election campaign, that's the current climate, but under Bill 40 in 1994 there was the highest level of investment in the manufacturing sector in Ontario in its history: \$8 billion. That's in one of the most highly unionized sectors of our economy and under the full implementation of Bill 40. So I have some difficulty with that stat and your statement. Can you help me understand?

Mr MacDonald: What's referred to in that statement, and I won't speak particularly to Bill 40, is an issue that I gather will be dealt with primarily in phase 2. We're thinking of rules concerning overtime. The flexibility that we would suggest should be considered when overtime rules are considered in phase 2. We're thinking of manufacturers that have as short as a two-hour interval between completion of a given product and its delivery to the customer's workplace. Those kinds of constraints, not uncommon in this industry at least, I think make it reasonably apparent why sometimes overtime needs to be available on a flexible basis.

Mr Christopherson: I want to get into the specifics of that, but I still have some difficulty understanding why you feel that you have to dilute the minimum standards for workers in the province of Ontario in order to continue to attract investment in the auto industry when we had record levels of investment in the auto industry under Bill 40 — never mind Bill 7, never mind Bill 49 — under Bill 40. So I have some trouble understanding why you think it's so necessary to wipe away those rights that

workers have gained in order to attract investment. We're already getting the investment.

Mr MacDonald: I haven't said that you'd strip away the role that employees have in the decision on how much and when overtime is to be worked. I wouldn't say for a moment that you'd strip away all protections. I would suggest that some flexibility be added. How that will be attained has to take into account both stakeholders, of course. Bill 40, with respectful submission, doesn't deal with overtime regulations in particular.

Mr Christopherson: Fair enough. It is the broader argument that you make. Now to deal with the specifics, because we've had a little bit of time in this particular case and I appreciate that. The specifics that you're talking about, indeed every labour organization, every group that represents workers, has come forward and said, "At the end of the day, there's going to be less rights for workers if you allow them to be negotiated away."

We've seen concessionary bargaining. I would expect that you have some experience in unionized background on one side of the table or the other and you can appreciate that just as unions sometimes make gains, they sometimes take losses during tough economic times when the employer is in a strong bargaining position. They put demands on the table, the same as the union does during good times. The one thing that's not on the table is how long somebody can be forced to work during a week, or when they're entitled to their rates of overtime.

You, by supporting this, would allow employers to put those demands on the table. Right now they can't be negotiated away and that's the concern. I fail to see how stripping away those rights, which is what would happen at the end of the day, is somehow going to make this a better place to live when the workers' health and safety, quality of life and basic fundamental protections have been taken away. I have some real trouble with that.

Mr MacDonald: A couple of things in response: One is I've been at pains to be fairly general in what we're saying about overtime in particular, not wanting to second-guess the thoughts that the government may have developed already at this point. I'm not suggesting that I know what they have in mind, in praising it or criticizing it, but only to say that we'd like to think that flexibility will be at least one of the factors they take into account in their review.

The Vice-Chair: Excuse me. We did go a little bit further, but if you don't mind, we'll go to the government side now. Mr Tascona, please.

Mr Tascona: I thank you for your presentation. I don't think you really need to explain the automobile industry and defend it. Certainly we appreciate the investments that are in Ontario and certainly we're looking for far more than has been put in it in the past.

There are some areas that I'd like to sort of quiz you on. You have a very large group you represent, over 90,000 employees. The education component for the employers: Do you actively get involved with making them familiar with the Employment Standards Act and matters such as how it affects them?

Mr MacDonald: We do have seminars on a regular basis on various aspects of the employment law.

Mr Tascona: So you're very proactive in explaining the laws of the province in the employment area to your members.

Mr MacDonald: In conjunction with some of the leading management-side labour firms that have seminars, as you must know.

Mr Tascona: In terms of collective agreements, is it your experience — with the changes under Bill 7 which resulted in arbitrators being required to consider all employment statutes in deciding the case, and in fact the actual reality is unions do negotiate human rights provisions and health and safety provisions into their collective agreement — do you find that the arbitration process works in those areas?

Mr MacDonald: I don't feel qualified to answer that question, to be honest with you. Sorry.

Mr Tascona: Okay. With respect to your third paragraph, you state that you consider maybe they should drop subsection 82.1(4). You say this provision creates "an advantage for unionized employees which is unfair and perhaps unconstitutional, given that many occupations are barred from collective bargaining under the Labour Relations Act."

1410

We're talking about a proceeding. Why would you feel it gives an unfair advantage to unionized employees?

Mr MacDonald: The fact that there would be no limitation period?

Mr Tascona: Why is that a problem?

Mr MacDonald: Clearly, it will bar those claims that are brought out of time. Maybe I'm missing your question.

Mr Tascona: I'm just trying to ask you to explain your statement there in the third paragraph.

Mr MacDonald: That claims that are brought after that two-year period, but brought by a unionized employee, would not be barred, whereas those brought by a non-unionized employee after the two years would be barred.

Mr Tascona: I think what it is, though, is that you'd have a hearing. The grievance procedure would be active and perhaps the hearing wouldn't occur within a two-year time frame. That's what I think this is about. Whereas, under the Employment Standards Act, if you have a referee seized to hear the case and it doesn't get heard for two years, that's when the limitation applies under the act. So perhaps we're not maybe at the same understanding of that provision. The intent is that the provision will not give them an unlimited limitation. That's not the intent — if that helps you.

Mr MacDonald: My reading of it would be that there is potentially no limitation in the case of a unionized employee. I can't read it differently.

Mr Tascona: There's a limit. The thing is they'd have to file their grievance and whatever, but it's talking about a limitation to have your hearing. Normally, most hearings would take place within two years for an arbitration.

Mr MacDonald: I'm sure that's so. But if there are mistakes made, if for whatever reason delay does take place — and I certainly have seen that with some clients in the past. The world isn't perfect. It will happen occasionally that arbitration doesn't proceed in an orderly

fashion. In those instances, if they be few or otherwise, the unionized employee will not be statute-barred in the way that a non-unionized employee would be.

The Vice-Chair: Thank you very much. The time has now expired. We do appreciate your being here today.

INTERCEDE

The Vice-Chair: I would ask that representatives from Intercede please come forward. Good afternoon. For those present, I would invite you to introduce yourselves to all of us.

Ms Fely Villasin: I am Fely Villasin. I am a coordinator of Intercede, the Toronto organization for domestic workers' rights. With me is Coco Diaz. She is a counsellor at Intercede. Intercede is an organization that works for domestic workers. We assist domestic workers individually with their problems. We advocate for their rights and we advocate for their equality of protection under all of the laws that apply to workers in Ontario. We would just like to begin with Coco reading from her notes.

Ms Coco Diaz: Maria is a domestic worker who was sponsored by a family to come to Canada. She was put to work the same day she arrived after a very long flight. She worked 13 to 15 hours every day. In addition to taking care of the family's children and doing all the housework, she had to car wash and shovel snow, which were not included in her job description. She was put to work seven days a week in order to repay the amount for her fare paid by the employers. No overtime was ever paid. The domestic received a total amount of \$10,000 for three years' work with the employers. She was terrified of her employers because of a threat of deportation, considering that these employers were responsible for bringing her to Canada.

The domestic was referred to a women's immigrant agency which then advised her to discuss with her employers that her employment rights were completely violated. The result of asserting her rights led to her termination without any prior notice. She lost an employment and lost a home. The domestic's priority was to find an employment in order to have a home. She was then referred to Intercede, which encouraged her to assert her rights and claim what was due to her. After obtaining another employment and receiving extension of immigration papers, she decided to file a claim with employment standards.

The domestic filed in December 1995 the approximate amount of \$30,000 plus, without overtime and holiday pay. She received acknowledgement informing that it takes an average of 10 months to investigate. Now under Bill 49, the worker will be raped two times if the maximum she can claim is \$10,000. Her priority is to find another employment and home and not to file for a claim, so six months' limit is worthless. Bringing to court is closing the door for domestic workers. Bill 49 is a gift to employers, which legitimizes them for continued violation and abuse to workers.

Ms Villasin: The dreadful combination of temporary status and mandatory live-in requirements of the live-in caregiver program makes a foreign domestic worker

extremely vulnerable to threats of deportation, fearful of reprisals and prone to tolerating abuses. Meanwhile, her ability to control her work life and her private life is marginal. It does not at all help that conditions of domestic work and caregiving, especially when done as a live-in worker, have continued to be unfavourable and vulnerable to many abuses.

A live-in caregiver/domestic worker is on call practically 24 hours of the day and night. Long and irregular hours and insufficient rest are commonly accompanied by inadequate compensation and unpaid overtime. Physical exhaustion, toxic products, sexual harassment and assault are occupational hazards in her job. She suffers from isolation, loneliness, racist and classist indignities, diminished self-esteem. Her stability, security and privacy are at the mercy of her employer. She does not expect to be paid when she is absent because she's sick. In fact, she gets scared she will lose her job because of it. She knows she's entitled to paid vacation or holiday, but many times she still feels she has to fight for these entitlements.

Yes, she may know her lawful rights but she is often helpless to exercise them because she would not want to jeopardize her immigrant status with any frequent change of employer. Besides, she has to be careful not to displease an employer with any complaint because a bad reference will keep her longer from acquiring a new job, and worse, a vengeful employer can accuse her of theft or child abuse and file a complaint that will go into her immigration file and delay processing of her landed status.

When a domestic worker loses her job, if she's live-in, she automatically loses a place to sleep. The domestic worker depends on her employer's goodwill to maintain her autonomy and her human dignity. She depends on her employer's good word to keep her immigration record clean, so she will have no trouble getting her landed status. She depends on her employer's compliance to respect the rights she's supposed to have by law. If she can no longer tolerate the abuse she suffers, she has no recourse but to leave her employment, and even after she leaves, she feels restricted from making a complaint. She prefers not to make waves. Her future and that of her family depend on it.

The stark dominance of an employer's power over the domestic worker, the isolation of workers in the home workplace, restrictions to their mobility and movement, these conditions make it difficult for domestic workers to enforce the rights they have or to negotiate for better working conditions.

Bill 49 will further diminish any chance for domestic workers to claim their rights and have them enforced. Bill 49 will give abusive employers a go signal to keep on abusing the rights of their workers. Bill 49 will reinforce the common notion that most women's work, particularly work in the home, should be done for free.

The laws that exist to protect workers' rights and workers organizing must not only include domestic workers in individual home workplaces, but they must be substantially improved. More important, enforcement mechanisms must be improved to allow domestic workers to benefit from minimum standards. If domestic workers

are to effectively organize and negotiate collectively for better working conditions, then government measures must be implemented to enable them to exercise this fundamental right, not by taking away their right to organize their union but by giving them effective measures that will support such organizing.

1420

Our principal opposition to Bill 49: In one year Intercede received 4,201 inquiries related to violation of domestic and caregiver workers' rights. Most of the inquiries were from women who live in their place of work. These inquiries were all related to non-payment or underpayment of wages owed: overtime, vacation, holiday pay, termination pay etc. Yet very few come forward and bother to make a claim. As far as we know, less than 1% of these inquiries resulted in a claim being filed with the Ministry of Labour.

Bill 49 will reinforce the helplessness of domestic workers and caregivers, especially live-in, to enforce their rights. It will discourage them further from making any claim against abusive employers. On the other hand, Bill 49 will legitimize the common practice of employers to cheat their domestic workers and caregivers.

The shorter limitation period will greatly discourage a domestic worker, especially if she's living in, from making any claim against her employer. It will encourage an employer to cheat on a domestic worker for long periods of time while being assured they will only have to pay for six months of violation, if at all.

A cap on ESA claims will legitimize non-payment or underpayment of money owed to a domestic worker, especially one who is in a more vulnerable and helpless situation such as slavery or bondage, while letting the employer off for more than \$10,000 of violations. For example, a domestic worker who was brought to Canada by her employer, whose passport was withheld, who was locked in the house and had no contact with the outside world and who later escaped after three years, would not be able to claim more than \$10,000 of what is owed her.

Going to court to file a complaint is less of an option for domestic workers psychologically, financially and timewise. As it is, domestic workers are not over-eager to make use of the Ministry of Labour enforcement mechanisms, because of the intimidation of the process, the delays and time-consuming process. There is no question they will be more discouraged from bringing an employer to court, which is a much more threatening prospect for any immigrant, much more for a temporary work permit visitor. The use of private collection agencies will create situations that will pressure a domestic worker to expedite payment and agree to lower amounts than can rightfully be claimed.

Bill 49 will not make employment standards enforcement more efficient; it will take away any remaining options for domestic workers and caregivers, especially those living in, to enforce the rights they are entitled to. We have suggestions for enforcement and they are part of our brief. I will stop there. Thank you.

The Vice-Chair: Thank you very much. We have approximately a minute and a half per caucus, starting with the third party.

Ms Marilyn Churley (Riverdale): Thank you for your presentation today. I think it's important that we hear from you directly. We've heard in the news over the years about the unique and difficult and different employment situations that domestic workers often have, and I think that your submission points out some of the real areas of concern. Can I ask you — you did make some suggestions in this bill — if you were to ask the government to do one thing today, what that would be. What do you think is the most important area for you to have changed here?

Ms Villasin: The most important area would be that the enforcement of the rights that domestic workers have be efficient and prompt and resolved quickly, not by taking away their rights but actually by making the process less intimidating. So the whole process should be made more efficient.

Ms Churley: So what you're saying is the existing laws need to be improved, but what this bill is doing is making it worse.

Ms Villasin: It's opposite.

Ms Churley: It's the opposite, actually going backwards instead of forwards.

Ms Villasin: Definitely, yes.

Ms Churley: Do I have another —

The Vice-Chair: About 15 seconds.

Ms Churley: Would you say that some women can be in jeopardy as a result of going backwards, given that this is mostly women domestic workers living in people's homes?

Ms Villasin: Jeopardy in the sense of — right now, there's only 1% of those who complain to us who go and make a claim. The possibility is it will be even less than 1% who will ever make a claim after this.

Mr O'Toole: Thank you very much for your presentation. I don't think we've specifically heard from a domestic/home worker group in the past. I think it's a good, insightful presentation. I was just looking up some of the current employment standards acts on domestic workers. You're aware, I gather, that they're not covered directly, similar to most other working groups under the current act?

Ms Villasin: Under the current act, they're not covered for all of the act.

Mr O'Toole: That's right, yes. So there are a number of changes. In this act, you feel, because of their isolation, perhaps they're even further disadvantaged. Is that really the thrust of what you're saying? Because of their workplace itself, they're disadvantaged from the enforcement or entitlements?

Ms Villasin: Because of the non-consideration of the situation of women who are working in the home, they are at a disadvantage under the current employment standards. Yes, I'm saying that.

Mr O'Toole: How would you characterize the type of work? Are the majority of employers of domestics bad employers?

Ms Villasin: The majority of employers do not consider them real workers. This comes from the fact that for a long time they were not covered and protected as real workers. They were not covered under the employment standards, for example, until 1986, if I remember

correctly. So there is a traditional look at women who do women's work in the home workplace, that their work should be free. When they are paid, they are paid less and when they're ever protected, they're protected less, as is the case now.

Mr Hoy: Thank you very much for your presentation. Is it fair to say that some of the employers of domestic help think they're doing the worker a favour simply by having them in the house and that they're not required to pay them? They're giving them a roof and someplace to live, therefore they think: "This is a great favour on my part. I don't have to pay these people as well." Is that what they believe?

Ms Villasin: In fact, one of our long-standing demands of the immigration program is that the mandatory live-in requirement be not made a condition of their permits, because for us, the migrant domestic workers should really have a choice to be able to leave a bad working condition and it's more difficult for them if part of their being able to stay in Canada is tied to their being live-in workers.

Mr Hoy: And if they could choose their place to live, perhaps they would make more claims?

Ms Villasin: If they could choose their place to live, then definitely they would live in a good employer's home workplace, because most of the time they consider that as saving more money. But certainly each and every domestic worker wants the choice to be able to live in or live out. Actually, some employers, maybe a lot of employers, especially more the middle class and not very, very rich ones, actually prefer that their domestic worker not live in.

The Vice-Chair: Thank you very much for your presentation this afternoon.

LAW UNION OF ONTARIO

The Vice-Chair: I would ask if a representative from Andra Associates Inc is present. Seeing not, I would ask if the representatives from the Law Union of Ontario would come forward, please.

Mr Malcolm Davidson: My name is Malcolm Davidson. I'm a representative of the steering committee of the law union. To my right is Mr Richard Blair, one of our members, who is going to be presenting the lion's share of our brief, or a summary of it. We'll both be available to answer questions and make comments if you have questions.

Mr Richard Blair: I'm not going to read the brief. I think obviously the committee will have time to do that and there are important things the committee has to do by way of considering the submissions of all of the presenters. So that there's some time for questions, I'm going to focus briefly on a number of the points that are of paramount concern for those of us who represent working people and trade unions and have had exposure from that perspective to the Employment Standards Act and its workings over the years and have something to say about these amendments.

1430

We focused on a number of points in the brief and I want to take just a moment to recognize the authors of

the brief, of whom I was not one. Their efforts are of course important.

We focused first of all on access to justice for non-unionized workers and for unionized workers. We have focused on access because it's obviously important, regardless of what the statutory entitlements are. They're not particularly worthwhile unless they can be enforced.

The bill provides, first of all, for a statutory maximum for claims to be enforced, by way of a complaint to the employment standards branch, of \$10,000. That presents a number of concerns, from our perspective, the most obvious of which is that in cases where the entitlements which a worker has been denied exceed \$10,000, the worker is then faced with the choice of either proceeding through the complaint mechanism and essentially forgoing the amount in excess of \$10,000, or moving to the court system in an effort to obtain those entitlements to which he or she is entitled. The difficulty with presenting that choice is, first of all, access to the court system is a difficult and a time-consuming and expensive proposition for all except a fortunate few. Forcing people to trade off their statutory entitlement in exchange for an opportunity to pursue a statutory entitlement in excess of \$10,000 through the court system is a choice which we feel is inappropriate. The courts are less efficient, in our experience, less cost-effective, than the mechanisms that currently exist for enforcement through the employment standards branch, and the net result is essentially a cost transfer to the Ministry of the Attorney General in cases where the statutory entitlement exceeds \$10,000.

Similarly, there's a provision which prescribes persons from proceeding to complain for amounts under a stipulated minimum. Many of the same considerations apply for persons who wish to pursue amounts of less than whatever that prescribed minimum may turn out to be. The only avenue for enforcement will be essentially Small Claims Court, which, although it's more efficient than the courts at large, is certainly substantially less efficient than the current procedures under the employment standards branch enforcement and the Ministry of Labour mechanisms.

With respect to unionized workers, there is a serious difficulty, in our view, in providing that the collective agreement mechanism be the sole mechanism for pursuit of employment standards claim. One concern is that the mechanisms under a collective agreement, particularly in cases where collective agreements provide for tripartite boards of arbitration, come at a substantially higher cost than the pursuit of these entitlements through the employment standards branch. That cost is a real cost to the trade unions and a real cost to the working people and a real cost to the employer, all of whom will ultimately bear some share of the cost of the pursuit — the union and the employer in strict dollar terms; the employee in the terms of their claim having to be considered among a number of competing claims that a trade union may have to advance.

What we are left with is a situation where unions will be forced to place competing priorities on the enforcement of statutory rights on the one hand against the important business of administering the collective agreement with the employer on the other hand, and the

resultant tradeoff will be a net loss to the effectiveness of both the collective agreement enforcement and the employment standards enforcement. Trade unions do not have unlimited resources to pursue employment standards claims. They will have to make those tradeoffs. Those tradeoffs will surface in a number of ways if collective agreement considerations can't be addressed effectively through the arbitration mechanism. Because there are employment standards claims that have to compete with those, those concerns are going to be addressed at the bargaining table and they're going to show up in terms of industrial conflict and, again, in many ways it's just a cost transfer.

The other problem, of course, is that the arbitrators themselves may not feel compelled to do exactly what the employment standards officers do in terms of interpretation of the legislation. You can be assured, I think, that the employment standards officers will not necessarily consider themselves bound by interpretations of the legislation that are arrived at by arbitrators. The net result will be a less than consistent application of the employment standards legislation and these important minimum standards across the private and public sectors. One goal, it would seem to us, of public law is some consistent enforcement of public standards, which stands to be sacrificed if the enforcement in a collective bargaining relationship is transferred exclusively to the domain of arbitrators.

With respect to some of the provisions that were initially contained in a brief, there were moves to allow collective bargaining tradeoffs. I'm not going to comment in detail on that. Should that appear again in the form of further amendments to the act, it will be of concern at that time, but I would simply say that it's extremely difficult to measure monetary rights against non-monetary rights and it's extremely difficult to ascertain how a package of rights can be said to be better than or worse than, taken together, a statutory minimum. We would have grave concerns if that part of the bill were to find its way back on the table and into legislation because we feel the situation, as it currently is — one knows, for example, that an employer can't put an illegal demand on the table that undercuts employment standards rights and if they do so it's a simple conclusion that they're bargaining in bad faith. Many employers, as soon as they realize that, simply take the illegal demands off the table. If there are going to be protracted arguments about whether the demands are or are not illegal taken together as a package, those are simply going to find themselves in front of the labour board at increased cost to the parties. They're going to find themselves in the place of industrial conflict as those issues don't get resolved easily and quickly in collective bargaining. We would not want to see those provisions back in the bill.

There are a number of recommendations we make for trying to prevent violations of the Employment Standards Act. These are important minimum standards. We have referred in our brief to Professor Arthurs and his comment, which is as timely now as it was in the 1960s, that there is such a thing as industrial citizenship, and there are rights that pertain to workers that should not be subject to easy erosion and there are minimum standards

which all citizens and all workers, regardless of their citizenship, should be able to rely on.

We have some real concerns about any efforts, as we see here, to privatize, to move those standards out of the public sphere and into the private sphere. It seems to us that the most effective thing that can be done and the best thing the Legislature could do would be to take the steps that we, among others before this committee, have recommended in terms of ensuring that there are proper inspections and proper reporting mechanisms, proper enforcement at the front end so that people don't have to worry about the cost and where to place the cost of litigating violations to basic standards in the workplace at the back end.

I welcome questions that you may have. I think the most appropriate thing to do is to answer questions at this point, but before I do that I'm just going to ask my colleague Malcolm Davidson if he has anything that he would like to add before I take questions.

Mr Davidson: Thank you, Richard. I'd like to stress the points we've made in our brief at pages 5 and 6. We are aware of attempts by the legal profession and by the Ministry of the Attorney General to fix civil litigation to make it affordable within this province. There have been various initiatives taken by the legal profession and some of them by the Attorney General — case management being one, ADR, alternative dispute resolution being another, simplified rules of civil procedure — but the fact is there are no results from those programs yet. Civil litigation is a broken down horse. There are attempts to breathe life into it, but there are certainly no results from it and any move by the Legislature and by the government to force people to use civil litigation is a regressive move, in our view. Thank you. We would ask for questions, if you have them.

1440

The Vice-Chair: We have a minute each per caucus, starting with the government side.

Mr Rollins: Thanks for your presentation. I think it puts a different light and twist to it than we've heard from different presenters. The time frame that most unions we have heard, and people I suspect you're affiliated with too, as a time period to grieve a grievance is approximately 15 days, two weeks, maybe three weeks, but in that time frame. Everybody seems to be concerned that when, away from those, we ask for a six-month period of time, because we've heard from other presenters that when it exceeds that six-month period of time all of a sudden records are a year and a half or two years old and people who were working there are not there. Do you feel that's taking away very many rights from the number of people who would be grieving it under that six-months condition?

Mr Blair: Let me address that. It's obviously been the case up to this point that whatever the time frames are for employment standards complaints it's been two years to this point, and of course it's proposed that it change, and it may change. The first thing I would say is that consistency is important. I'm not sure I understand why it is that a worker who has a trade union should be required to complain more quickly than a worker who doesn't. There will be cases where the trade union will contribute to the

worker's understanding of the issue, and so a complaint can be made faster because there's a trade union there that knows a complaint should be made faster. But trade unions aren't all large, sophisticated organizations with sophisticated legal departments or legal counsel or non-legal people who are well trained. Some of them are very small.

We've heard a lot about workplace democracy under this government and I think if one were to examine trade unionism in Ontario, both in the past and today, you'd find that a lot of trade unions are really made up of small locals of rank-and-file people who don't necessarily have all of the specialized knowledge they need about statutory entitlements right at their fingertips. I'm not sure they should be less entitled to whatever the time frame is than someone who's not represented by a trade union. That strikes me as just unfair.

The other thing I would say —

The Vice-Chair: Excuse me. I am going to have to move on here. Mr Hoy, you only have two now.

Mr Hoy: No, but that's what it was.

The Vice-Chair: Yes, we had a minute.

Mr Hoy: Thank you very much for your presentation. I was very interested in your comments about access to the courts and how it can be difficult. I guess you were talking about both in time and in dollars and cents. I appreciate that, and some of the other statistics you provided. You did mention that the standards branch might be more efficient than the courts. Can you give us a quick reason why you feel that way?

Mr Blair: I feel that way because in part the employment standards people are well-trained, dedicated public servants. They know what their job is and, but for considerations of backlog, they do it as quickly as they can and they get good results. They also have access, by virtue of the statutory mechanism — they can do inspections, they can get records, they can get results because they can get things that in a court process we're not going to be able to get until we get to pre-trial or discovery. Similarly in the arbitration process, we're not going to get until we produce a subpoena on the first day of hearing. That's a waste of time and it's a waste of money. There are well-trained people who do the job now to the best of their ability and they can do it much more cheaply than the courts because they have the knowledge and they have the access to the tools to do it.

Ms Churley: Thank you very much for your presentation. On page 13, just a minor point. I would say that you're talking about Ontario having joined the race to the bottom, although you don't use those words. That's part of what's going on on all fronts. I would mention that you should put declining labour, environmental and social standards in there, because the environmental deregulation and lowering of standards is just breathtaking.

Mr Blair: I think we completely agree with that.

Ms Churley: I think it's important.

I want to ask you a quick question. Earlier today, the Employment Standards Work Group suggested that one way to improve the situation of non-unionized workers who fear retaliation if they file claims would be to make it illegal to fire workers without just cause. The federal labour code already includes this, and of course workers

who are unionized have this protection. So it's a simple question: Would you support adding the just-cause protection to the Employment Standards Act?

Mr Blair: Absolutely. There's no greater chilling effect on someone's ability to complain or enforce their entitlements, whether they be employment standards or workers' compensation or other basic workplace rights, than the knowledge that they might be fired, wrongly fired, for trying to do it. There's no reason an employer should be able to discharge someone without just cause. There's no information that it caused any problem in the federal sector. It works extremely well. There's really no human justification for not all standing up and saying anybody should be entitled to employment without fear of dismissal without just cause.

The Vice-Chair: I thank you for being here this afternoon.

OLSTEN INTERNATIONAL BV

The Vice-Chair: To assist committee members, we do have a representative from Andra Associates in the audience now. We also have a representative from Olsten International. To their agreement, we'll be hearing first from Gary French from Olsten International due to a need to catch a plane. Thank you very much, Mr Andrachuk, for agreeing to that.

Welcome to our hearing process. Just so you know, we have 15 minutes for presentation and question-and-answer period combined.

Mr Gary French: First of all, I would like to thank the next group, which has managed to make it possible for me not to incur too many traffic tickets on the way to the airport.

My name is Gary French and I am the managing director of Olsten International, one of the world's largest temporary staffing companies. I am a member of the government and labour relations committee and a director of the Employment and Staffing Services Association of Canada, from whom you will be hearing later this afternoon. As an individual who has had direct responsibilities for hundreds of millions of dollars of corporate revenues in the US, Canada and Europe, I am of course particularly interested in any legislation that impacts workplace relationships from both my corporate perspective and, I might add, as a proud Ontarian who would like to see Ontario prosper in the future.

I recognize that this committee is at this time considering only the most basic housekeeping issues. In my view, this is nothing more than the late application of common sense when one considers when the current act was enacted. I support the minister's approach and look forward to the next phase of reform of this critical piece of legislation.

The current legislation seeks to provide basic protection to workers in recognition of the fact that there is an inherent imbalance in the relative bargaining position of some workers as compared to employers. It seems to me that this is reasonable, but it is also fair to say that those addressing this committee for the most part do not represent those workers or indeed businesses least able to give you input, and this should be borne in mind when considering the briefs submitted.

Ontario is a part of the trend towards a global economy and needs to strike a balance that allows its businesses to compete cost-effectively while providing adequate levels of protection to the most vulnerable workers in society. To ignore this basic market reality and role of governments leads to the kind of problems Europeans face with high unemployment and with capital being exported to more favourable and flexible business environments. Ultimately the very people that we seek to help are the ones who suffer most. Flexibility must be the cornerstone of the review process in providing minimum standards.

1450

The current act is difficult to understand and expensive to enforce. I support the initiatives in Bill 49 to privatize collections and clarify the language issues with regard to the entitlements around pregnancy and parental leave. Phase 2 will hopefully result in language that is more clear in so far as issues of substance are concerned.

The continued notion of application and enforcement targeted at those in need of protection must be preserved in phase 2. This means workers but also businesses in the sense that the act must not create biases in favour of small businesses over larger ones, as the inevitable result is to make today's big businesses tomorrow's small businesses. In the case of my own industry, the temporary help industry, it is important to keep a level playing field that not only doesn't create biases, but that recognizes the different nature of our workforce. Our employees work as much or as little as they choose and often for several different employers. It is important to remember that it is the assignment of the employee that is temporary, not the employment relationship. We need employment standards legislation that takes into account a myriad of non-traditional employment relationships and promotes self-reliance in the workplace.

It is important that employers have clear rules to follow without double jeopardy between the courts and administrative tribunals. At the same time, it must be recognized that those in need of protection have a responsibility to act in a timely manner and to receive help in an equally cost-efficient, timely manner. This is ultimately of benefit to both parties in an employment relationship and to the public purse that finances claims recovery.

The critical issues still lie ahead. Bill 49 sets the stage to begin phase 2, which will be part of an industrial strategy platform for Ontario's ability to compete in the 21st century as a modern, adaptable and globally competitive place to work and live.

I would certainly welcome any questions from members of the committee.

The Vice-Chair: We have just over three minutes per caucus, and we will start with the official opposition.

Mr Hoy: Thank you for being here. A fair bit of your presentation is talking about the phase 2 aspect, I believe, where you're talking about workers that may work for a time with multiple employers, various hours and so on, and I think those kinds of discussions are clearly going to be needed. We would rather have preferred that this phase 1 and phase 2 had been done all together so we could view the whole government opinion. They did have

part of this phase 2 discussion in this bill and then withdrew it. I think it would have been good for all employers, employees and legislators to see everything all at once. I do agree with you that many of the critical issues will lie ahead. Notwithstanding that, there are many, I believe, in Bill 49.

We really don't have a lot of time to get into it, but you do recognize, and you say that you do, the position of vulnerable workers. I hope you maintain that attitude as we look at phase 2, and I'm sure you will.

Mr French: Let me just reassure you. I simply view this time as one to serve notice on the committee that this is something I'm interested in, and, as I wrote, I'm interested not just corporately but personally.

I spend a great deal of my time in Europe. I've had broad responsibilities in the US, and I think I have some knowledge of the impact of these kinds of pieces of legislation on people. I certainly look forward to hopefully being able to participate in the process and to comment.

I've been rather disappointed at the reactions to this first phase. I mean, half the stuff I read in the press talks about child labour camps and so on. It's been miraculously overblown. I simply viewed it, particularly with the minister's withdrawal of some provisions, as simply housekeeping.

With regard to whether it should be all bound together and linked, that's not for me to comment on, but I'll wait for the government to roll out its process.

Ms Churley: I agree with you that we should never blow anything out of proportion, and that sometimes can happen in the press either way. But this committee has been hearing time and time again from, in particular, the most vulnerable workers. We heard today from domestic workers and garment industry workers. You know from the press and other areas that these are particularly vulnerable workers, some of whom don't even make minimum wage.

You describe Bill 49 as housekeeping and common sense, and I'm sure you haven't had an opportunity to look at the whole thing, but I would say to you that it is the perspective — and I'm not talking about the press here today but those vulnerable workers — that this bill contains much more than housekeeping. I'll give you an example. With a cap of \$10,000 and a six-month limit now, many of them, again especially the low-paid women, will be left out. And that's just one aspect to it. In my view and in many vulnerable workers' view it's not just housekeeping. How do you perceive that? How would you tell these workers that it actually is just housekeeping and not to worry about it?

Mr French: Well, you've got a bunch of concepts in your statement, but let me talk about the domestic issue which you raised. One of the things that concerns me there is that since the advent of basically the norm of two family incomes — and that, I realize, sets aside the issue of single parents and so on — we're facing things where, quite apart from the issue of employment standards, we have a multibillion-dollar underground economy just of cleaning ladies, for example. It doesn't take a rocket scientist to say that at \$75 a day, which is pretty normal for a cleaning lady, times five days a week, you have a

pretty good amount of money that is outside of the tax scheme, from which all of us in both levels of government are hurt. That's a related issue when I talk about a platform of industrial strategy.

Conversely, there are companies that are in the business of providing home cleaning services — ours is not by the way — and they find themselves at a disadvantage because people will go to individuals whom they simply pay cash to outside of GST, outside of the tax framework, and who in many cases are probably claiming other social safety nets on the side.

So while I have a lot of sympathy for the issue of what I think you would probably term the exploited worker, there are other issues that are not quite as clear and simple as to say all domestic workers are in poor shape. Many of them are making \$25,000 a year tax-free. Many people wouldn't mind that position.

The issue that is central to what you're talking about is, how do you allow for the kind of flexibility for those who are playing honestly in the game from both sides, employers and employees, while still making sure that those least able to protect themselves are not exploited and taken advantage of? I don't think there's anybody who from a business perspective would disagree with that statement.

Ms Churley: But those are the ones we're most worried about here. I take issue, but we don't have time to go into it, with what you said about domestic workers. But the most vulnerable people — we're not worried about the good businesses and people who are playing by the rules. It's those others that we are worried about. Is my time up?

The Vice-Chair: Yes, it is. Sorry.

Mr Ouellette: Thank you for your presentation. Does your company provide home-based workers, workers who go into households or work from their own house?

Mr French: On the health care side of the business. We are the world's largest provider of home health care people.

Mr Ouellette: How do you as a business regulate that aspect of the business? Because, as has been mentioned a number of times, one in four new positions created in the Metro area is in the home-based industries. How do you as a business regulate that?

Mr French: I don't see what you mean by regulate it.

Mr Ouellette: How do you monitor what takes place? Earlier on, for example, the needleworkers were concerned they would be paid on piecework, but I have no idea how somebody could judge if that person stops for a break when they're doing the job. I don't know. I don't know how you would regulate something.

Mr French: But they're paid piecework. That's exactly the reason why that doesn't matter. They're paid for what they produce, not for the time they put into it.

Mr Ouellette: Okay. In your business it is the providing of a service?

Mr French: Our business is providing a service for which employees tell us how many hours they worked. On the home health care side, the patient would sign off that they agree with those being the hours they worked. On the staffing service side, the client company would sign off that they agree with that, which is the basis for

our payment to our employee and our billing to our customer.

Mr Ouellette: So you monitor yourself and you have a good working relationship in that area?

Mr French: Absolutely.

Mr Ouellette: How would you envision the government stepping in to monitor some of the home-based businesses? Yours specifically, you may have some other ideas because you have experience in how this operates in other facets.

1500

Mr French: How would I anticipate the government stepping in to regulate it?

Mr Ouellette: Yes. How would we monitor what takes place when people operate out of a home-based business?

Mr French: I'd have to think about why there's any demonstrated need to regulate that area of business. At this point in time it seems there are so many non-traditional forms of work going on out there that even this committee, in the numbers of days it's allocated for hearings, is never going to hear about them all. The interesting thing is that I don't seem to hear anything broad-based that would suggest that particular group of people feels they're taken advantage of in any way. Certainly from the point of view of our industry, which is non-traditional in the sense that we assign employees to work at a client's premises, almost never have I ever heard any sort of complaint or issue arising from that.

Mr Ouellette: Okay. I appreciate that.

The Vice-Chair: Thank you very much. Time is close enough to expiry that I don't think we should start with another question. Thank you very much for coming this afternoon.

Mr French: Thank you for the opportunity.

ANDRA ASSOCIATES INC

The Vice-Chair: I would ask that John Andrachuk come forward, please. Good afternoon. Welcome to our hearing process.

Mr John Andrachuk: Good afternoon. My name is John Andrachuk. I'm president of Andra Associates Inc. We're a general management consulting firm. I've got a pretty eclectic background in business. I've been everything from president of three manufacturing companies to CFO of a couple of insurance companies. I've been in the publishing business, the hotel business and so on, all at general management levels. So I've got a pretty comprehensive idea of how business works in Ontario. I've mainly been an employer, but when I was a young fellow I was an employee.

I'd like to start off with a personal anecdote. I've got six kids, and three of them are university age. A couple of years ago two of them were working at the Canadian National Exhibition, which you might think is a fairly well organized organization, having been around for longer than Confederation. Anyway, both of them got cheated, by two different organizations. These were the bad bosses we all cringe about.

My wife got really mad about this and she went after them. They refused to make the payments they were required to do. One was about \$50 or \$60; the other was

about \$175. She ended up going to the employment standards group and asked them for enforcement. To her surprise, they said, "Oh, that's no problem at all, ma'am. If you can just demonstrate this" — which she did — "we'll issue a cheque to your kids," which they did immediately. It was very impressive. My wife then said: "What do you want us to do to help you to collect the money from these bad people?" And they were bad people. To her chagrin, the officer told her, unequivocally and without any intention of doing anything else, that they would not go after these creeps. They wrote off a couple of hundred bucks, two or three hundred bucks, whatever it is, and the reason was that economically it made perfect sense in those two particular cases, because it would have cost more to go after the enforcement.

But what happened here? The good employers paid for this, the good people paid for this, and the creeps got away with it. If you don't act, if you don't enforce, then the bad guys get away with it, and these are the people we read about in the paper this morning.

That's interesting, but that's really not why I'm here. I think this is probably fairly boring and the fact that there's been virtually no press coverage except for yesterday really indicates that. This really is just house-keeping. Why wasn't most of this stuff done years ago? If this officer who went to my wife and blithely wrote off several hundred dollars of the people's money had had the enforcement powers, the time and the focus of being able to collect, to enforce, then it would have been a different story and maybe these bad people would have been driven out of business and some good people would have had a chance.

To me, unless I've totally missed the point of what's going on here, I think the fact that Bill 49 is calling for focus — in other words, take the crap away from the enforcement officers and let them do their job — looking for efficiency; taking away the silly things — for example, if you've got a union contract, why not let the union contract rule? It's got a grievance procedure. I'm personally very familiar with how those operate. They work. Why not let them work? Why involve another party, to the cost of the people and, moreover, to the cost of the good employees working for bad employers?

So this thing this morning — they showed it in the paper — I found quite pitiful actually because that's exactly what this is all about, isn't it? To address exactly that kind of question and to make it possible for the ESA officers to go and do their jobs. Maybe in the question period you guys can take me on, because — I don't know — I might have missed something completely here.

Anyway, the real reason I'm here today is that I'd like to urge you, as the resources development committee of the Legislature, to get on with the real job here, which I understand you're going to do in the fall, of reformation of labour laws, practices and embedded inefficiencies, inflexibilities and rigidities, to let Ontario take its rightful place among the winning and progressive jurisdictions of the world. We should be up there with the winners. The way the game is set now, it's extremely difficult for people — businesses and employees — to do that. I think you can do that at the same time as improving worker justice and equity, because without a job there is no

equity. It doesn't matter whether your job is at \$8 an hour, \$6 an hour or \$100 an hour — without a job there is no equity.

The world of work, as we all know, has changed fundamentally and irrevocably. We're never going to go back to the way it was. What's basically needed now is labour market flexibility to accord with the new game. I think you all know that there's a stunning comparison between the rate of job creation in the European Union and the United States over the past 15 years or so. There's a direct counterpoint here. They have labour forces of roughly the same size. The EU has had no net new jobs since at least 1980 — no net new jobs. In contrast, the United States has created at least 15 million net new jobs. That isn't accidental. The central reason for it is labour market flexibility.

I'd like to deal with the question of the nature of the workplace and how I believe it's changed over the past 20 years or so. Here's how it's been for about the past 100 years. We've got supervisors and we've got workers. We've got managers and we've got employees. We've got owners and we've got workers. We've got masters and we've got servants. We've got the companies and we've got the unions. We've got us and we've got them. We've got actors and we've got the acted upon. That's the way the game was actually set up. That's the way it was designed. That's the way it was organized. That's the way it is. Therefore, I presume we could all say that's the way it has to be and should be forever.

I'm going to suggest to you that there has to be a fundamental change. There are a lot of interests, and some of them have probably been represented in your hearings here, in whose interest it is to continue the current practices. It's in their interest. People who've got union jobs, people who've got bureaucratic jobs that enforce the current practices etc. If you look at this pitiful response this morning, the only thing the press was given to talk about by what's come in front of you was about these bad bosses. Yet Bill 49, looked at in its essence, clearly intends to address exactly that question: to give the enforcement officers the ability to enforce basic labour standards, employment standards. Why don't you just get on with it?

To do this, to get on with the world of the future, you've got to get on with changing the frameworks, regulatory barriers, non-productive mandated costs, coercive practices and organizations, barriers to adaption to the new economic world. You've got to put your attention to getting rid of the baggage of the past. I'm going to suggest to you that the new world of work — in contrast to the past century or so's paradigm, we need to create a new mindset about the organization of work where there is room for us and them, where everybody who is working for an organization is actually part of an economic unit, an essential part of it, and in fact is a partner in it. Then there's a common economic interest. We don't have masters and slaves. This is 1996, not 1910.

1510

People should be able to move to where they can be most productive, earn the most, be the most satisfied and, yes, escape the bad bosses. If working as a domestic or

in the unregulated economy or whatever is such a bad thing, let's put the situation in place — you're the only people who can do it — where they can escape and get good work at good pay for long term.

Wage labour is the concept you've got to get rid of. It was invented to suit the organization of mass production but it no longer applies to the new world of work. Finite management was designed by the bosses to make their jobs easier. The worker was seen as an interchangeable unit. The mindset was institutionalized in their own self-interest by the unions, by the lawmakers, by the lawyers, by various management practices, management systems and so on. They all lead to the institutionalized adversarial labour situation we have today. By design, the labour laws are adversarial and confrontational — by design. Smart, real smart. It may have been smart in 1955; it's dumb in 1996.

I'm suggesting to you that we need the work practice flexibility that Bill 49 is beginning to address. I believe there was a retraction of one of the proposals, and that proposal dealt with negotiated work practices; for example, working on a holiday. I personally think it's incredibly pitiful and silly that it was withdrawn. I don't understand why it would have been. Surely, in 1996 rational people can make an agreement as to when they're going to work and what their conditions of work are going to be. They don't need the interference of a base law that says you can't work on Canada Day or you need triple time or whatever on Sunday or a statutory holiday. It's silly, perfectly silly.

I'd like to congratulate you on your addressing the administrative cleanup items that are set in Bill 49, but you need to get on with the real job. You need to put in place the rules of the game that will create long-term, rewarding jobs for Ontarians and I look forward to your further deliberations later this fall.

Ms Churley: Thank you for your presentation. I think your last comments are ones we could probably all agree with, about well-paid jobs being available for everybody. How we get there I guess is the big question. I don't know we would agree fully — I've been listening carefully to your presentation — about how to get there. But certainly, in terms of this bill and some specifics, I found your story about — I believe you said it was your children working at the Ex. What happened happened to my daughter. There was also sexual harassment involved. I know countless other people have had those kinds of problems over the years. It's a good example of why we need good laws and enforcement.

Bill 49, for instance — and this is why I would say it's not just dealing with housekeeping here — would allow the government to set a minimum level of claims recoverable. We don't know what that's going to be yet, but to me that's very crucial. That's not just housekeeping. Coming back to these young people who were exploited at the Ex, leaving aside whether or not they were in that case dealt with or not — in the case I'm talking about they weren't either — don't you think that setting a minimum is going in the wrong direction?

Mr Andrachuk: Ms Churley, that's the only item I saw when I read this stuff that I completely disagree with. I notice there is no specification of it. I think

whether it's one cent or \$1,000, the act should apply. There simply is no excuse for having a minimum, I don't think.

Ms Churley: So you would recommend that there be an amendment. Thank you.

Mr O'Toole: Thank you very much for your presentation. I concur that the real job is phase 2. That's the real job.

I don't espouse any more global competitiveness than is absolutely necessary, but I think this morning we did get some good information. It wasn't in the press; it probably will be picked up. But we've got the book here and we're getting it waved in front of our faces. It's *Bad Boss Stories* and it's out. But actually, as I was reading the report that was submitted, I have to thank the Employment Standards Work Group for giving me the statistics that during the period of the last 10 years, the history is that the number of claims has gone up by some 300%, and the amount of the claims has moved up 300%, and yet the collection has gone down by almost the same amount. So it's fine to have laws. My point is this: Is the current system working?

Mr Andrachuk: It sure sounds like it isn't.

Mr O'Toole: The number of claims is going up, the amount of the claims is going up by 300% — you can quote me — and the collection has gone down.

Mr Andrachuk: It sure sounds like it isn't.

Mr O'Toole: It's 23 cents on the dollar. The system's broken. Anyone who thinks the status quo is acceptable, I'm not sure where they have their head; maybe in the sand.

Mr Hoy: I appreciated your presentation. In the early part of it, you were talking about enforcement. Clearly we have to do a better job of that. The previous member's comments on the 300% range that he's talking about, I'll solidify that, and I think that's what you were trying to get across to us today.

We recognize that many of the employers are good bosses — many of them — and there are good working relationships, both unionized and non-unionized, in Ontario. However, we must look at those who fall through the cracks who are vulnerable or victimized. Maybe they're not vulnerable; maybe they were just victimized, like your children were. But I appreciate your comments and your thrust that enforcement could be a large part of the problem here.

Mr Andrachuk: Very definitely. Without power, it's totally ineffectual, it's impotent. Why have it on the books?

The Acting Chair: Mr Andrachuk, we appreciate your presenting to us today and appreciate your attendance here. Thank you very much for taking the time.

TORONTO-CENTRAL ONTARIO BUILDING AND CONSTRUCTION TRADES COUNCIL

The Acting Chair: If we could now call the Toronto-Central Ontario Building and Construction Trades Council, Mr John Cartwright. We have 15 minutes to spend together. If you'd like to make a presentation to us, we can use any remaining time in questions.

Mr John Cartwright: My name is John Cartwright. I'm the business manager of the Toronto-Central Ontario Building and Construction Trades Council. That represents about 40,000 unionized construction workers in central Ontario. With me is Irit Kelman, who I have asked to sit in with me to present a personal experience that I think is important for this committee to understand.

Mr O'Toole: Mr Chair, is there a written presentation?

Mr Cartwright: No, there's not a written presentation. There will be other presentations made by the provincial building trades and some other specific construction unions.

I guess when I'm looking at this bill, it's pretty clear why much of the response to Bill 49 has been to say that this is the bad boss bill, because from our perspective it certainly is about encouraging and condoning the activities of bad bosses.

When I think back to that famous old saying, and I'll try to paraphrase, that the law in its wisdom allows both the rich as well as the poor to sleep under bridges, it's almost an irony that Bill 49 allows the rich to do one kind of thing and the poor or the workers to do something else, in the sense that at this point in time, with the bill, you have the ability of an employer to steal from their employees. If it reaches over \$10,000, there's no penalty and they're in fact rewarded for having stolen that much more from their employees. Of course, if an employee was to steal anything, they'd be facing immediate dismissal and probably a jail sentence.

Those are the kinds of frustrations we feel as an organization looking at this initiative, as well as a number of other initiatives of the government.

I want to cast your minds back to 1961 and St Patrick's Day, a wonderful historic day in Toronto. In 1961, five labourers died tragically in a tunnel disaster known as Hogg's Hollow disaster in Toronto. They died because of poor regulations, because of a lack of a health and safety regime and enforcement. Their deaths and the tragedy that surrounded it sparked basically an upsurge in the immigrant community in this town, among the Italian immigrants largely, demanding to be treated with dignity and to be treated as human beings. As a result, a whole lot of red tape was established: red tape around tunnelling, red tape around shoring and red tape around health and safety procedures.

1520

This is 35 years later, and part of this government's interest seems to be eliminating red tape. Unfortunately, it's the red tape that in many cases protects our people, because what was happening in the 1960s, with young men lining up along Dufferin Street waiting to be picked up by pickup trucks to go and build the houses and the apartments and not knowing really who they're working for because they didn't have the language or the knowledge of the laws, being exploited and finding themselves being given rubber cheques week after week but not being in the position to complain because they were worried about what their status was, or their families' — that's still being repeated today. Probably most of you who sit in the Legislature and come from perhaps other parts of the province don't know that that's being repeated today. But if you get up at 6 o'clock and you look up

Dufferin Street in Toronto, you'll still see that with the new immigrants, be they Portuguese or West Indian or African or Latin American. That's still happening.

Our council is involved currently in a large organizing drive in the housing sector. The interesting thing that's happening is that we're not being faced with people who are saying, "Oh, yes, we want higher wages and benefits and pension." We're being faced with people who are saying, "I want a union because I've been promised a certain rate," or if I'm pieceworking, "a certain amount of money to do a house, and when the house gets done, or the third house or the fourth house gets done, the boss says, 'I know you're supposed to get \$1,100 for that but I can only afford to pay you \$800; take it or leave it.'" That's still happening today in the construction industry.

We have experiences of asbestos tear-outs with fly-by-night contractors where immigrant workers who don't know the English language or don't know their rights are being involved in tearing out asbestos and being given dust masks to do the work, and then at the end of the day still not being paid properly. When the job is over, the company disappears and they have no rights to get anything that's owed to them.

So to see this government's initiative moving in the direction of taking away what protection workers have and not bolstering the protection of workers is really quite galling.

I'm going to touch on a couple of very specific things. The first is the aspect of the act that talks about the requirement to either take the act or take civil action in order to get the employee wage protection plan. In the construction industry, you must register a lien in order to be applicable for that. The amendments that are brought in through Bill 49 would put our people in a situation where they could jeopardize themselves by either not engaging in civil action and therefore forfeiting any right to an employee/worker plan, or trying to get ahead with what's there and basically being put in a catch-22. I would imagine that's an oversight of the drafting and I would want to point that out, as I imagine a number of other deputants from the construction industry will do.

We want to point out very strongly that while we applaud the government, realizing that one of the initial proposals about flexible standards that could be negotiated has been withdrawn, we are very concerned that anybody thinks they should bring that back in at some later date and in some other format. It's clearly unacceptable that the law would allow for contracting out of standards in that format, whether it be, from what we've seen in our industry, by so-called company unions that have been established to sign sweetheart deals with the company — and the notion that they could go beneath employment standards is unacceptable — or in fact even a legitimate trade union that's put in a very difficult bargaining situation where people are out on strike for weeks and weeks and being told that they only get an agreement back if they agree to conditions less than employment standards. Either of those situations is quite frankly immoral and we hope that does not see the light of day again.

I've asked Irit Kelman to join me, because she's a young woman who spent some time this summer working

in the service sector. When I talk about our membership being construction workers, that's only one part of the picture, because of course all of our people, their wives or their daughters or their immediate family generally work in the service sector. The kind of intimidation that's in the service sector is far more problematic, I suggest than we even have in construction, where there's no such thing as seniority.

Irit perhaps has the benefit of having an education and having English as a first language, which many of our members' wives and friends and girlfriends and daughters and children do not. But I'd like her to share an experience that she's had recently working in the service sector in the restaurant industry.

Ms Irit Kelman: Good afternoon. As was already said, my name's Irit Kelman. I'm a university student at York University and, like a lot of other students this summer, I had quite a bit of trouble finding a summer job, which obviously one needs to survive in university.

Looking around, I finally managed to find a job at a new restaurant-café that opened up in the Yonge-Bloor area. However, there was one catch to it: I had to agree to train without pay. Considering that time was moving on and I just needed something so that I could get some sort of money, I agreed reluctantly. Luckily, I was a fast learner, so after a couple days I had the coffee-pouring and cake-cutting down pat and I was actually able to start my paid shifts. Some of the other details of some of the violations that occurred in the restaurant are in — this is one of the stories in the bad-boss hotline, the book that you were handed out this morning, on page 87.

Eventually, I did get my money. I was removed from the schedule because I had made it clear I wanted to try a different job. Because I'd made such a fuss the first time about being trained for free, the boss was afraid to approach me to suggest free training again, so I was just removed from the schedule without warning. It took a month before the first paycheque bounced and then I had to keep going back to get my money, which was given to me in small change — lots of fun to carry around.

The most frustrating thing for me was that some people — and not all of them; I've had a lot of good jobs. But there are a lot of employers out there who are consciously and purposely breaking the law because they know the enforcement is not as strict as it should be. I was told to my face that myself and all the other people could go and lodge a complaint with the Ministry of Labour. He doesn't care. He's not denying that he owes us money; he just doesn't happen to have it at the time and knows that it'll take a while before an order is actually made, and even then there won't be any punishment.

Another example is that he hired two students who were in from the UK on a work exchange program, so they are legally entitled to work in Canada. They eventually quit because the conditions in the restaurant weren't exactly pleasant, and he absolutely flat out refused to pay them and told them to go to the Ministry of Labour. But with a six- to nine-month time period before an investigation is begun, these students will be out of the country and there'll be no way for them to enforce their rights.

It's just interesting that this morning a lot of the employer organizations were saying that they were involved in extensive educational work with their members. It would appear that it's not that the employers don't know, that they aren't aware of the standards. It appears, to the contrary, that they are aware of the standards, and that's what makes it more insidious. All these breaches are done knowingly and almost strategically to try to increase their personal profit at the expense of people who need to pay rent and pay for school and other things like that.

Mr Cartwright: That's the kind of situation, as I said, and to some degree Irit is quite lucky because she has English as a first language. But many of our members' families work in the service industry and they face those kinds of situations time and time again.

That's our presentation, members of the committee. I'll be happy to answer any questions.

The Acting Chair: Thank you very much. That leaves us three minutes, with about a minute per caucus. We'll start with the government side.

1530
Mr Baird: Thank you very much for your presentation; we appreciate it. Obviously issues like you encountered as a young person starting out as a student are particularly relevant. We've heard a tremendous amount, particularly about the issue of education and how we can best do that. It's certainly an issue we're looking at.

My question pertains to your thoughts on collection agencies. One provision of the bill, as you know, would contract out the collections component of the act. Right now the collections are attempted to be done by employment standards officers themselves since the collections branch of the ministry was disbanded in 1993 by the previous government, with the resulting staff discharge.

Would you have a problem if private collections agencies could bring in more money for more workers? Right now we're only bringing in 25 cents on the dollar. If that provision did stand and was passed and implemented a year from now and the rate were to go up considerably, do you think that would be a good move or a bad move?

Mr Cartwright: Why do you think the collection agency could get more money than your current employees? Obviously the question that leaps to mind is, the people who will be working for a private collection agency would be, I imagine, paid less than the current public employees, and we would oppose that move.

Mr Baird: They do right now. We as a ministry accept less. The reason, in answer to your question, would be pecuniary interest.

Mr Hoy: Thank you for your presentation this afternoon. It would be interesting to know the correlation between high unemployment rates and, we'll say, abuses of employees. We had a submission a week ago where an employer said he had approximately 350 job applications for five positions in the service sector area, so he had lots of people to choose from. It would be interesting to see how the statistics of abuse to employees increase with the unemployment rate, because obviously he has the power to say, "I have 345 other people who wanted these jobs, so you work the way I suggest." I appreciate your story

and how you were affected by that, but I think it would be interesting to know.

Just recently, not before the committee but otherwise, I heard of job applications and the person said, "I had a stack this high" — it was quite big — "and I just grabbed the top of it and threw it in the garbage and looked at the rest of them." We can clearly see that some of this may be affected by the high unemployment rates and the abuse that follows through from that.

Mr Cartwright: There's no question that we've seen a correlation with that, particularly in the housing industry. When the bottom dropped out of the housing market in the late 1980s, people generally were being paid the fair rate. After three, four or five years of very high unemployment there wasn't the option of walking away from that employer who was cheating them. If that was the only person who had a job, the next time they had to go back to that person even though he'd just ripped them off for 30% of their wages on the previous project. That's how it's impacted on our people.

Mr Christopherson: Thank you both for your presentation. Two quick questions: One, earlier today we heard from the Council of Ontario Construction Associations, who said, "The goals of Bill 49...are clearly a more efficient and effective use of government resources, while protecting basic standards for employees." I wanted to hear what your reaction is to that statement.

Second, in the restaurant, were other employees prepared to stand up for themselves as you did or were there people who were afraid to because of recrimination by the employer?

Ms Kelman: When I was working there — I ended up only working there for a month — an employment standards claim did come in at the time. I don't know what other people have done. I tried to get a copy of the phone list, but a lot of the phone numbers were wrong, and obviously, because everything happened so fast, it was too late to go back. Also, as Don was pointing out, I know that for a lot of people in the kitchen, who work at the back, English is not their first language, and in terms of paycheques bouncing and not being paid and schedules being shifted and breaks not being given they were even worse off than the people in front. But people need money; they need any money they can get.

Mr Christopherson: Do they know their rights?

Ms Kelman: Most of them do, but they're scared that if they complain, they're going to lose their jobs. When you've got rent cheques and a family to support, you take what you can get.

Mr Christopherson: Sure.

The Acting Chair: We appreciate very much, Mr Cartwright and Ms Kelman, your coming in and presenting to us today. Thank you.

LUMBER AND BUILDING MATERIALS ASSOCIATION OF ONTARIO

The Acting Chair: We now welcome the Lumber and Building Materials Association of Ontario, Mr Stephen Johns. Would you please identify yourself and your associates for the Hansard records.

Mr Stephen Johns: Thank you very much, first of all, for having us here today. My name is Stephen Johns and I'm here today in my capacity as executive director of the Lumber and Building Materials Association of Ontario. The LBMAO is the largest and most diverse regional building supply and hardware association in Canada.

Accompanying me today are Simon Dann, the president of Buildmat Distribution Ltd, one of our LBMAO associate members who is representing our government affairs committee, and Andy Schroth, LBMAO member services manager.

The LBMAO is a not-for-profit trade association that represents an industry comprised of some 850 retail lumber and building supply and hardware stores in Ontario. The LBMAO's retailer members, ranging from the major chains to small independents, generate over 80% of the industry's total annual sales volume in Ontario, which stands at approximately \$4.5 billion. Our association also has some 240 associate members, of which Simon's company is one, and in that associate category we include manufacturers, wholesalers, distributors and buying groups, among others; in short, the suppliers to the retail side of the industry — just a little preamble as to who we are.

Given the times and considering that our economy, from a provincial perspective, must be competitive vis-à-vis the other provinces, let alone internationally, we view the proposed changes contained in Bill 49 as bringing an affordable and effective balance to an act that may have become too heavily weighted to one side. Perhaps it had also become too costly and bureaucratic. It is possible, however, that as economic and social conditions evolve, further revisions to those contained in Bill 49, enforcement powers etc, may be required. For now, however, these reforms appear in our minds to represent moves towards a positive balance in the act.

I'll highlight and comment on a selected few key points.

First with respect to the amendments encouraging the workplace parties to become more self-reliant, we view this as a very positive move in that it empowers the workplace parties, and while there will on occasions be an unhappy party, we feel that this effectively places responsibility more in the hands of the workplace parties to negotiate mutually beneficial agreements and hopefully in the process develop stronger employee-employer relationships. What we don't see is an intrusive kind of government stance as aiding and abetting that particular situation.

On the point that the act will also be made easier to administer by giving enforcement staff access to employers' electronic records, this may be something to be uncertain about, especially access to electronic or what could be perceived as confidential or proprietary corporate records and information. However, having said this, in fairness, for those who are deliberately hiding information to avoid their obligations, this obviously could be viewed as a useful reform from the employee's perspective.

The same could be said about the handing over of collections to collection agencies, as employers would

typically prefer not to be subjected to collection agencies. However, again in fairness, in today's cutback mode we feel that such a measure will help existing employment standards staff to operate more effectively and efficiently from the important investigation and enforcement perspective.

On the issue of reducing the limitation period for filing a claim from two years to within six months of the alleged violation, we feel this is a welcome change, as it forces the claimant to make a move in what could be called "current time" rather than two years later, for example, when everyone, including the claimant, conceivably has lost a clear view of the event in question and the associated issues. The shorter time frame should be supported, I believe, by employers and employees alike.

On the issue of increasing the limitation period for appeals to 45 days from the present 15, we again view this proposal as a welcome change since it really provides a more realistic time frame within which to consider all the information and evidence necessary to make a clear decision on whether or not to pursue recourse, pursue an appeal or whatever.

1540

Further to that we suggest that this change theoretically should provide the increased flexibility to resolve problems. In the absence of revolution, after having spent an appropriate amount of time and effort, there is now the specific time frame within which remedial action must be taken. We think parameters of that nature are beneficial to all concerned.

On the issue of prohibiting employees from pursuing a complaint through both the ministry and the courts, this change is probably significant in so far as it simply enhances the overall efficiency of the process.

On the issue of clarifying employees' rights regarding seniority and the entitlement to vacation pay and time under pregnancy and parental leave provisions, we view the move towards clarification as a welcome change and a welcome move in that it reduces opportunities for creative interpretation of the act. It also provides comfort to the employer in knowing more clearly what his or her position is within the subject context. Having been there as an employer I would appreciate that kind of clarification.

After six months employees will still be able to pursue their claims through other avenues, such as the courts. In a sense I believe this proposal implies a pay-as-you-go approach if the claimant has not been responsible enough to file during an "active" period. Again, it's just logical and makes good sense.

On the issue of minimum and maximum amounts for claims, there was previously a cap. The fact that over the last few years we've had no minimum or maximum, has left the situation open and potentially too expensive, as some employers may have discovered, not to mention, on the other side of the coin, potentially punitive to employees.

In conclusion, we feel there are two questions that must be answered within the context of the proposed changes inherent in the Employment Standards Improvement Act:

First, do the proposed changes enhance employer-employee relations and in the process reduce employer exposure to costly violations?

Second, will the proposed changes maintain employment standards as opposed to slackening them, to the disadvantage of the good, the fair and the honest employer and, conversely, to the advantage of employers who are tempted to cut corners?

We suggest that if the answers to these questions are yes, then we support and applaud the spirit and intent of the subject initiative and would look forward to its very early implementation.

Thank you for having us, for your attention and for affording us the opportunity to appear before you today. We're open to any questions.

Mr Hoy: I am interested in your comments about the electronic transfer of information and registering and so on. Most groups have rather favoured this type of action, but I wonder if there would be one or two or so come forward and have some hesitancy about it. Do you care to elaborate on your nervousness about that?

Mr Johns: We received a response to our reticence on that score from the minister, who suggested there was nothing to be worried about and that this was really within the spirit and context of efficiency. Having said that, I think Simon had a strong feeling on that one, so perhaps I'll defer to Mr Dann.

Mr Simon Dann: It's simply a matter that some companies will have proprietary and a competitive information product, financial information, and once you access an electronic or a computer database it's really quite easy to move around, so there could easily be some concern, perhaps paranoia, about visitors going into inappropriate areas. That might be misplaced paranoia, but let's face it, it's really easy to move around inside a computer if you know your way around, and all of a sudden information comes up in the marketplace that you didn't want. With honest employers, there's no problem on that score. There could be some concern. Obviously, let's face it, people being what they are, there are some out there who will be hiding information, so for them that's not a welcome area. But there are some legitimate concerns.

Mr Hoy: I can understand that because there are good employers and businesses that simply don't want to have their information shared with their competitors, so it's just a natural event.

Mr Dann: That's not to say that the person coming in to do the investigation is going to look around, but in today's environment everybody is going to be paranoid about keeping their information secret.

Mr Christopherson: Thank you for your presentation. I found it interesting that you felt the move to six months from two years is something that would be, because it's beneficial to both employees and employers, supported by both. I would suggest to you that if that indeed were the case, one would expect that after three weeks of travelling around the province we would have at least one presentation from someone, whether it's unionized, non-unionized, legal workers, community activists, somebody who represents the interests of workers, somebody, one group, who would agree with you that that was a good

move. That didn't happen. Why? How do you square that?

Mr Johns: I'm not sure what the answer to that question is. Certainly it's our feeling that if there is an issue that has developed in the workplace that is not resolvable, apparently, through the respective parties or the affected parties in the workplace, I would think that both of those parties would want to see an early resolution one way or the other, not only an early resolution but an effective and appropriate resolution. I think the longer you drag these things out, the more negative the atmosphere becomes between the affected parties.

As I mentioned in my brief, memories tend to wane a little bit as time goes on. I would just think that fundamentally that kind of situation would be the type of situation you'd want to put to bed as effectively and as efficiently as possible, as quickly as possible.

Mr Christopherson: The reality seems to be, from presentations we've had in every community — every community we've had a presentation, and usually a number of them, that because 90% of all claims are filed after a worker leaves the place of employment, and because of anecdotal evidence, most employees in these situations working for a bad boss — not the good members you've had, but the odd bad bosses who are there — are afraid to make a claim. Many times they have to wait until they've secured another job, which is difficult in this market, particularly if they don't have the greatest skills. The two years allows them a chance to secure new employment and then they can file the claim and claim back at least two years of time that's lost. This will prevent that from happening and people will either have to put their job on the line or forgo the money they're owed.

Mr Johns: Point well taken again.

Mr O'Toole: Thank you very much to the Ontario lumber and building association. As in all industry, I gather today that technology and concern for workers' safety are paramount in the workplace.

Mr Johns: Certainly in our industry, workplace health and safety is critical. It's critical from an insurance perspective, it's critical from a WCB perspective, it's critical from an operational perspective. It's clearly a priority in our industry.

Mr O'Toole: I am pleased to hear that. Do you believe this report is going to facilitate a more timely response to those bad employer situations — the six months, for example? It's going to force those things to come in front of the employment officer earlier so that employees coming into the work setting, which may be a bad employer, don't accumulate a two-year diatribe of cases and complications. Do you see that as part of this?

Mr Johns: That's clearly our interpretation, and if I didn't make that clear, I apologize.

Mr O'Toole: I'm just trying to get more clearly that I understood it, not that you did.

Mr Johns: Really, I think one of the attractive features of Bill 49 is its commitment to expediting an early resolution of a process.

Mr O'Toole: You've probably seen this and you'll probably hear a lot about it from the union leadership in Ontario, which is going around about "bad boss" and

"bad, bad, everything bad," and that this is wrong and it's draconian. Do you think this is good for Ontario's working climate or is it scaring away the small business person, this whole strategic kind of approach to negativism around that, as if the majority — this suggests that the majority are bad bosses.

1550

Mr Johns: If it suggests that then —

Mr O'Toole: Isn't that bad for the economy?

Mr Johns: I think that's offensive, but I think the question, with respect, is somewhat rhetorical. I don't know whether I'm answering the question, but I'd like to make a point, at any rate. One of the attractive features, we think, about this legislation is that it gives both the employer and the employee some credit. I think employees and employers have the ability to sort out problems with a view to resolving those things satisfactorily. I think sometimes legislation sells human beings — employees, employers — short on that score. But in terms of the document which you are referring to, I think your question is —

Interjection.

Mr O'Toole: I go to the Beaver Lumber store and the Millwork and all those places, and they're the real businesses in the community.

The Vice-Chair: Sorry to interrupt you, Mr O'Toole. Time has expired. I thank you very much for coming here today.

COMMUNITY AND LEGAL AID SERVICES PROGRAMME

The Vice-Chair: I would ask that a representative of the Community and Legal Aid Services Programme, Osgoode Hall, please come forward. Good afternoon, sir. For the sake of those present I would ask you please to introduce yourself.

Mr Barry Wadsworth: Good afternoon. My name is Barry Wadsworth. I am a division leader with the workers' rights division at the Community and Legal Aid Services Programme at Osgoode Hall Law School.

Mr O'Toole: You're standing in for Deborah?

Mr Wadsworth: I am. She was called away to court. Community and Legal Aid Services is a student-run poverty law clinic at Osgoode Hall Law School. It's funded by the Ontario legal aid plan, York University, and through private donations. The division in which I work, the workers' rights division, is staffed with volunteer students who advocate for clients in the areas of unemployment insurance, wrongful dismissal claims, some workers' compensation and employment standards claims.

The thrust of my presentation today is that there is nothing in Bill 49, An Act to improve the Employment Standards Act, which will do anything to assist my clients to redress their grievances against their employers when they breach the Employment Standards Act. In fact, it takes away several of those rights. The second point is that you already know that. You can't not know it. Bearing those two points in mind, I'd simply like to talk about what the changes will do and the effect they will have on some of the clients I have had and will have in the future.

First of all, the limitation period, the reduction from two years to six months: I have a client who had an employer — we can talk about bad bosses and good bosses; I've had both. But the fact is, this is a person who had an employer who deducted \$400 a month for Revenue Canada deductions. He never remitted it to Revenue Canada. Revenue Canada isn't going after that employer. She can go back, under this new legislation, only six months, which means she loses one and a half years for Revenue Canada deductions.

Can she go to court? She probably could. She would have to go to Small Claims Court if she came to us because we're only allowed to represent in Small Claims Court. If she went to General Division, she'd have to hire a lawyer. She cannot get legal aid because it's an employment matter. They don't give legal aid certificates. A lawyer would probably cost her the significant portion of what she would get in a General Division award. It's not worth her time. The Employment Standards Act is there to protect her rights against those people who would misuse the rights they have as employers. They violated the law, and because you're going to change the limitation periods, they're going to get away with it. That is not right.

The maximum claim: Currently there's no limit. The limit is going to be put at \$10,000. I have a client whom employment standards awarded a \$16,000 claim for wages and benefits that this person wasn't given by her employer. So what happens with a \$10,000 cap? She could have taken it to General Division. It would have been a two- or three-year claim to try to get that money. What does she do in the meantime? There's unemployment insurance, but we'll get to that in a moment.

This person stole money from my client. He did it contrary to the legislation of this province. Because she can't get adequate legal representation, she's going to lose out on a significant portion of that. She can come to us and we can take it to Small Claims Court: \$6,000. We can take it to employment standards; she gets \$10,000 under the new legislation. That means he gets away with 6,000 of her dollars. That's not right.

As for a minimum amount, which it's suggested we go into the regulations, I have a client who was charged \$98 to fix a machine that broke down while he was using it. It was a floor scrubber. I went to the Employment Standards Act, annotated version, to find what cases could be used to show that this was the wrong thing to do. The only case I could find was the same employer. He'd already had a decision made against him. He's done this sort of thing before. If you draw up and create a minimum, even of \$100, this gentleman loses \$98 to an employer who already knows that he's violating the act.

Avenues of redress: Currently you can go through the Employment Standards Act and you can do the wrongful dismissal claims. The problem? The first is the money. A lot of employers, believe it or not, actually put on their record of employment when they terminate an employee that it was for misconduct, whether or not there was misconduct, or they'll put down that they quit. Why? Because then they don't have to pay the statutory termination pay. The problem is that if it says "misconduct" on that record of employment and they try to go and get

unemployment insurance, they don't get it. They don't get general welfare. They can get interim assistance, but that's the end of it. So what's he going to focus on? He's going to come to us and say, "I need money coming into my pocket because I have to feed my wife and children." So that's our focus.

Unfortunately, we have a client whose employer put "quit" on the record of employment. He doesn't speak English. They just handed him this paper and said, "Don't worry about it." He went home, took it to his son, who does read English, and he said, "It says on here you quit today." He didn't even know what the form was. He thought he was going back to work on Monday. He'd been there eight years. It took us from November until July to get his unemployment insurance. So we hit the limitation period, the six months, again. We're focusing on trying to get money into his pocket. If he'd filed a claim when he started, and we're focusing on his unemployment insurance, he'd be stuck because of that six-month limitation period and the 12-day period as well. He has to make a choice between employment standards or wrongful dismissal in that 12-day period.

As for the courts, obviously, as I stated, there's a limitation to the \$6,000 in Small Claims Court that we're able to do. There's no legal aid. In the common law, you can go to the higher courts and get a higher award, but unfortunately it's a higher test. What do you sue them for? Do you sue them for breach of contract? How many of these small employers have contracts with their clients? So they talk about what the terms of the contract are. It's also a higher test. You go to court, you have to prove more than you do under the Employment Standards Act. Under the Employment Standards Act, all you have to do is show that the employer owed this money, and you get it. Under common law, it's a lot harder to get an award for a client; there are a lot more hoops that you have to go through. Essentially, there are also the Small Claims Court judges who, while they are very good, are far more into smaller commercial matters, and they're just not used to the sophistication that can be had through employment contracts.

1600

Conclusion: There are the collection agencies, and there's the matter of getting a settlement as opposed to getting an order from an employment standards officer because it takes a little less time, so you settle for an amount that's less than what's required under the act. The collection agency will then be able to negotiate. Because you haven't got any money, there's a little more pressure on you, they can negotiate it down, and it doesn't come into review until 75% of what the settlement order was, which is already lower than what you would have got under the employment standards requirements.

Our position is that our clients shouldn't have to discount their rights to ensure the bottom line of a collection agency. That's what it comes down to. As I said, nothing in the act, as far as we can see, is going to assist our clients in redressing the grievances that they have against employers who have violated the act.

What I would ask is that you make changes based on a thought, and that is a thought of one of these people, any one of them, or go a little further: One of your

daughters or your grandchildren is going to be in the workforce, and they're going to have their rights violated by an employer. It's bound to happen; out of the group that's here, it's bound to happen once. What do I tell them, or what does the person after me tell them, when they come and say, "Is there anything you can do about this?" and they had a six-month limitation period? I say, "Sorry, pal, you had a statutory right, but unfortunately you missed your chance because you were working, you knew that if you filed a grievance you'd probably get fired, and so you've lost that chance."

As in a paper I put in previously that I believe had been distributed, the end of it says, it's a paraphrase of Hippocrates, "If you can do no good, at least do no harm."

The Vice-Chair: Thank you for your presentation. We have about a minute and a half per caucus, starting with Mr Christopherson.

Mr Christopherson: Thank you for your presentation; it was quite interesting. I would agree with you. If we could get them to at least do the last thing you suggested, which is not to do any harm, I could live with that; it's the ongoing attack and damage they're doing to the most vulnerable that's so hard to stomach.

Earlier today, we heard the Canadian Federation of Independent Business make a presentation. In that presentation — and I'd like your reaction to this — they said, "Small business people complain to us that labour legislation is one-sided and that employees enjoy many rights but few responsibilities." What's your reaction to that submission?

Mr Wadsworth: In significant instances, it is one-sided, and unfortunately it's skewed the other way. A lot of people know their rights or don't know their rights, but they can't ask for them to be enforced, because they need to continue to be employed. Even if they're going to lose their job, they need some sort of letter that's going to tell the next employer, "Take this person." It's skewed all right, but it's skewed the wrong way.

Mr Christopherson: The government called Bill 49 "An Act to improve the Employment Standards Act." How do you feel about that?

Mr Wadsworth: I need to know who the improvement is for.

Mr Christopherson: What's your best assumption, based on your legal background?

Mr Wadsworth: My best assumption is that it's to improve the bottom line of the deficit of a government that's focusing on the wrong things. It should be focusing on the people and not the money.

Mr Christopherson: I'm sure I'm running out of time, but I would say to you that you should know that Bill 49 will allow the government to lay off 45 employment standards officers by virtue of the rights they take away that no longer need to be enforced and the downloading on to unions and into the courts, as opposed to upholding their moral and legal responsibility under the law. I want to thank you for your contribution to the fight to try to stop this.

Mr Wadsworth: If you could give them my card.

The Vice-Chair: Is there somebody from the government side?

Mr O'Toole: Yes. That was a very interesting presentation. I just take small exception with your opening comments. We don't have a written submission so I'm kind of going on memory here.

The Vice-Chair: In fairness, I think it was handed out in last week's package in advance of today's hearings. It's part of the reading from there.

Mr O'Toole: We got a fair amount of paper and I didn't get a chance to read this.

That we should have known, should be aware, that we were taking away rights, that's rather a presumptive statement. In my firm belief, I think I could make a substantive argument with respect to the six months. Let me put to you this question. It's an old axiom; you used a couple of them today. Doing something wrong for a long period of time gives it the appearance of being right. Have you ever heard it? It's the Hobbesian axiom of equality. Think about it: Doing something wrong for a long period of time gives it the appearance of being right.

I would put to you that the current act is — think about it: doing something wrong. This current act, we're collecting 23 cents on the dollar. Is that right? I'm asking you simply, is that sufficient?

Mr Wadsworth: An individual's perception of what is right or wrong doesn't necessarily mean that it is right or wrong. You have currently an employee who can take two years to file a claim and you must recognize the fact that they can be working during that period and not want to file a claim for endangering their own employment.

Mr O'Toole: That doesn't make it right, though.

Mr Wadsworth: But it is a two-year period that they have, right? That is a right. They have two years, and you're cutting it back to six. Now, isn't that taking away a right, whether it's right or wrong?

Mr O'Toole: It brings it to the surface earlier and the claim period is all likewise adjusted. If it's going to go on for two years, you'll spend twice as much in legal fees collecting half as much.

The Vice-Chair: We have exceeded the time here.

Mr Wadsworth: Then they shouldn't have done it in the first place.

Mr Hoy: It was an interesting line of questioning we just had.

Mr O'Toole: I have to be entertaining.

Mr Hoy: You agree that the limitation on six months for recovery of moneys lost is a reduction in rights.

Mr Wadsworth: It is.

Mr Hoy: Limiting the maximum to \$10,000, notwithstanding the fact you may be able to go to court — and you're suggesting that some won't be able to afford it — is a reduction of rights.

Mr Wadsworth: It is.

Mr Hoy: If the government is to put into place a minimum claim, would that not be a reduction of rights?

Mr Wadsworth: It is.

The Vice-Chair: Thank you very much for coming forward today.

AMALGAMATED TRANSIT UNION CANADIAN COUNCIL

The Vice-Chair: I would ask that a representative from the Amalgamated Transit Union Canadian Council

come forward, please. Good afternoon and welcome to our hearing process. For those present, I would ask you to please introduce yourselves.

Mr Tom Parkin: My name is Tom Parkin. This summation is made on behalf of the members of the Amalgamated Transit Union, who are the employees of many public and private operators across the province. Our members are regular middle-class working people, like the vast majority of Canadians. We have families, rent, mortgages, groceries to buy, young children to raise, parents to worry about who might be aging, friends we care for, we have ambitions for our neighbourhoods and we have concern for our country. Because of all these things, like everybody else, we cannot separate our particular interests as members of an organization from those concerns for our general society and our families and friends.

When we speak with concern about legislation such as this, it is not simply for ourselves, because in fact this legislation doesn't have a great deal of impact on us as people working right now, with some exceptions. But I don't want to dwell on those because I do want to dwell on the very harsh attack that you are taking on people. You're hurting people like perhaps your children, perhaps your friends, maybe your family members who are trying to build a life for themselves and will have that hurt by this legislation.

This legislation will lead to greater disrespect by employer for the law and a stronger feeling among some employers that employees can be abused and stolen from with impunity. This is because through this legislation, the Conservative Party is giving a green light to bosses who want to steal from their employees.

We are indirectly hurt because someone I work with today who may get laid off in the future may well find himself or herself trying to recuperate from injury looking for a job and finding very little opportunity, and then finding themselves on the margin of society. Those are the types of workers you are striking at. So you are striking at people we care about and we try to speak for.
1610

This legislation is part of a power shift and an attempt — maybe not an attempt, but certainly it causes a more polarized province.

Workers who are hurt by this legislation are at the margins of the labour force. They are the poorly educated, the young people trying to get a start, the immigrants searching to provide for their families, older workers trying to rebuild their lives after being discarded and downsized, and workers who have been injured. These are the people at the edge of our society: people who have no benefits, no pensions and no vacations other than those provided for in the Employment Standards Act. And now, through Bill 49, you're gutting the enforcement of this act.

These people most likely won't be making a presentation to this committee because the reason these people have no pensions and no vacations and no benefits is because they have no union and therefore they have no voice. If their boss rips them off on their hours or on their vacation, they don't have a steward, they don't have a local president to stand up for them, as do employees

in our workplace, and they don't have a fund that can find them a lawyer or hire an investigator. All they have is an employment standards office and employment standards officers, and you're taking those away. Congratulations, Conservatives.

The members of the committee know well what the amendments are to this act. I'm not going to dwell on them, but I want to raise a few points.

Between April 1, 1994, and March 31, 1995, there were over 14,000 employment standards claims. These claims covered everything of the usual variety. Investigations in that period determined that \$64 million had been illegally taken from Ontario's employees, and we know that \$64 million is a lot of missing cash and so we do know that there's a very, very big problem out there with employees being shorted. Anyone familiar with the workload in an employment standards office will know very well that the file backlog is terrible — three months before you would get a callback.

In this situation, obviously we're looking for a response. We would suggest that employers who break the law, particularly the repeat offenders, should not simply be told to pay back their employees but should be punished with fines, which would also serve as a deterrent to others.

As the situation stands today, lawbreaking can pay. If a crooked employer is caught, the worst that can happen is that he or she will be required to pay it back. But if not, the bad boss gets out ahead.

Another solution would be if the Conservative Party would actually make good on the promise of 750,000 jobs, because it's the desperation of people who fear joblessness that leads them to be easily taken in by those who want to take advantage of them in situations like this: people who are living at the margins of society. But instead what you've done is you've made it easier to deal with the backlog of claims not by creating jobs, not by enforcing it more toughly or putting fines on repeat lawbreakers; what you've done is you've just not allowed people to make claims. Thus, you've given a green light to certain employers to rip people off.

Today, if you were the victim of an employer who steals from you or otherwise breaks the Employment Standards Act, you can report it to the officer, just as you would report a house burglary to the police. And just as you would expect a police officer to investigate your house robbery, you would expect an employment standards officer to investigate if your boss stole from you on your paycheck. But now the Conservative Party has decided to exempt some lawbreakers. The Conservative Party believes that if your employee steals more than \$10,000, or if your employer stole from you six months ago, the government shouldn't investigate.

Bill 49 also gives the Minister of Labour, to enact a regulation, this green light level — the amount that an employer can taken from an employee at any time with really no impunity. The green light level is the amount under which a victim of a lawbreaker cannot make a claim. If it's set at 300 bucks, no one can make a claim of less than \$300, since proceeding through the court, as I'm sure you have heard repeatedly, would cost far more than \$300 and could take a long time. This is really not

an avenue that makes any sense to a victim of lawbreakers. In effect, this is a green light to bad bosses, and it's shameful legislation.

Imagine if the Conservative Party told people that the police wouldn't investigate a theft of more than \$10,000 or less than \$300 or more than six months old.

Imagine if you came back in the spring and found your cottage had been ransacked but the police said they wouldn't do anything about it because it happened more than six months ago.

Imagine if you were stopped on the street and somebody stole \$300 from you and the police said they wouldn't investigate because it was too little: "We have a lot of other crime to deal with."

Imagine if somebody stole your car and they said, "Well, it's worth too much money so we can't investigate that."

Nobody in their right mind would allow that kind of lawbreaking to go uninvestigated. Nobody would suggest to these people that they have to go to court, and that's why this is a green light to bad employers, to people who are employers but really they're thieves, or they're doing that.

Every student returning to school could get ripped off by \$200 when they return to school, \$300, whatever you're going to set this reg at. So unless you've got a brother, sister, father, mother who's a lawyer, you're kind of out of luck.

But let's be clear where the pressure for this is coming from; not just from the employer community, who are obviously rubbing their hands with glee, but it's from your own stupid tax cut. You're laying off 43, 46, 45 — I've heard various numbers — of the 150 claims officers. That was of course leaked in the business plan of the Ministry of Labour last — I think August 18 was the date. But because of that, you can't keep these 46 people on, so now you're finding ways of stopping investigations from coming forward. What you've done is you've crucified the people on the margins of society so you can have a tax cut which benefits the richest the most. It doesn't square. It's unfair, shameful legislation.

If I were an MPP, I would be morally bound to vote against this. I know that you're only bound by the whip. I know that the whip is appointed by the Premier, and I know the Premier is very dedicated to his tax cut and getting the rules and regulations out of the face of employers. But this legislation, if it's allowed to go as it is, shows that this government is morally adrift. There is a problem here.

The labour movement and part of the political opposition are really the only voices for the people who are at the margins of society, the unorganized workers, who will suffer because of this legislation.

I urge opposition MPPs to do whatever you can to amend this legislation so as to eliminate the green light level, to punish repeat offenders, don't let them off, and to investigate all incidents of lawbreaking.

I appreciate the time and invite any questions.

The Vice-Chair: We're just up to the 10-minute mark. Given that there are two parties left in the room, I'll divide that evenly, which is two and a half minutes per party, starting with the government.

Mr Baird: Thank you very much for your presentation. We appreciate it. There's obviously a disagreement in philosophy with respect to the bill. Obviously our view is that the changes contained in Bill 49 will improve the administration and enforcement of the act, but I guess there's no point in debating that.

I did note, though, in your submission on page 4 something that I agree with completely: "Another solution would be for the Conservative Party...to deliver the 750,000 jobs your leader promised during last year's election." During the election, we promised to put in an economic plan that would see the economy create 725,000 new jobs. That would obviously do more for workers in terms of taking off the squeeze that employers often have in tough economic times.

I was pleased to read an article in the paper yesterday: "Ontario Jobless Rate Drops to 8.5%." We're number 1 in new jobs.

"Ontario once again is leading the nation in job creation. The province laid claim to 51,000 of Canada's 82,000 new jobs last month. Since August 1995, two months after the Tories regained power in the Legislature, Ontario has accounted for 150,000 of the nation's 215,000 new jobs." If you look at just 1996 alone, 102,000 jobs have been created in Ontario.

Even the official opposition is smiling: "'This is very solid job growth,' the Liberal finance critic, Gerry Phillips, said."

If you take a five-year economic plan, at the current rate we're set not just to match the promises made in the election campaign but even to exceed them at 750,000 new jobs. Ontario is now the economic engine of Canada. We're finally a magnet for job creation, investment and opportunity. By getting rid of regulation, by cutting taxes, by bringing less government in it's creating a climate for job creation. I guess I completely agree with you that if that promise is delivered on, that'll do more for employment standards, that'll do more people. The best social program is a job.

1620

I think that's good news for the Ontario economy and I think that's in agreement with your comment that obviously people are desperate for work and the fear of joblessness really has an effect on employment standards and workers being hesitant to come forward. The best policy for that would be a strong, buoyant Ontario economy. That's very much the economy we're trying to create.

Mr Parkin: Is there a question involved?

Mr Baird: As I mentioned at the outset, just a comment.

Mr Parkin: Okay. I'll make two responses to your comment. Firstly, if you can't see exactly the point that I'm making there, then I don't know what your problem is. It's as clear as day what's going on and what you guys are doing. If you guys can't figure it out, that someday one of your children or your family or your friends is going to be hurt by this legislation or some of the other cruel things that you're doing, then you're only deceiving yourselves.

Secondly, yes, jobs are being created. It's amazing what lower interest rates will do. Maybe if we had done

that a while ago, as the labour movement has been suggesting for some time, we'd have more jobs today. Maybe if we had inflation of 2% instead of 1.3% or whatever, we'd have more jobs, but I don't hear you advocating that.

Mr Baird: You're the one who says another solution would be to try to create 750,000 jobs, like we promised during the election. The economy is creating those jobs. We're having more hope and opportunity for a better future in this province. I agree with your comment in your paper.

Mr Christopherson: What a load of garbage from the parliamentary assistant. The fact of the matter is, with the changes that you're making to WCB, with the changes that you're making to the Employment Standards Act, with the changes you've made in the Ontario Labour Relations Act, the changes that you're going to make in the Occupational Health and Safety Act, we have to ask ourselves, what kind of jobs are they creating?

There's a joke going around Ontario that has someone saying, "Yeah, I'm thankful the Tories are creating some jobs; I have three of them." The fact of the matter is that you're not providing a future for people.

I'd like to ask Mr Parkin a question. On page 2 he states, "This legislation is part of a shift from a society based on respect for the laws and the rights of others towards a more polarized place, where the power of those who are greedy is no longer held in check by the laws of our society."

Would you please expand on that and tie it in with the overall Tory agenda as you see it.

Mr Parkin: As I see it, it's to basically lower everything that holds us together. Employment standards: What do you need them for, right? It just makes people lazy and greedy, eh?

What you're doing is you're beginning a big class war. You haven't even really got to the middle-class folks, but you've picked on everyone who's sort of low down on the totem pole so far. It hasn't got too bad, but it bothers some people.

Mr Rollins: It doesn't bother you?

Mr Parkin: It does bother me, very much.

Mr Christopherson: I'd like to ask you another question.

The Vice-Chair: Excuse me, one person has the floor at a time and right now the discussion is between Mr Christopherson and the presenter.

Mr Christopherson: Thank you very much, Chair. You also spend a fair bit of time talking about the minimum threshold that the government is bringing in and I think it was excellent the way you presented it in terms of if you'd lost your wallet with \$300 and the rationale of why it wouldn't be investigated. The government of course is giving itself the right to regulate by cabinet order in council what level that would be, but it's told us, "Don't worry," because it's not going to implement anything right now. I'd like to know how much comfort that gives you.

Mr Parkin: None. Could I tell you a personal story? When I was about 19 or 20, I worked as a summer student. At the end of the summer, I went to my employer in mid-August, whenever, and I said: "I'm

leaving, I'm going back to school. This is the date on which I'm leaving and I'd like to get my vacation pay on that pay cheque." And they said: "Vacation pay? You don't get vacation pay. You're a summer student." I said: "No, no, I get vacation pay. I'm very, very sure I get vacation pay. I know I get vacation pay." "No, no, you don't."

The day after I left that job I went down to 400 University Avenue and I made a claim and I got my vacation pay. It took me three months and it was 200 bucks that I worked for, that was mine. I had worked for it and now you would've taken it away from me. I think that's shameful. It's shameful.

The Vice-Chair: Excuse me. I'm sorry that time has expired. I appreciate your coming here today. Thank you very much.

EMPLOYMENT AND STAFFING SERVICES ASSOCIATION OF CANADA

The Vice-Chair: I would ask that a representative of the Employment and Staffing Services Association of Canada come forward, please. Welcome to our process this afternoon. I would ask you, for the good of all, to please introduce yourselves.

Mr David Stark: Good afternoon, members of the committee. My name is David Stark. I'm the public affairs manager of the Employment and Staffing Services Association of Canada. With me today is Karen Mugford, who is our president-elect. She is also a VP of ECCO Staffing Services, which is one of the largest staffing service firms in the world. Karen, I turn it to you.

Mrs Karen Mugford: We won't go over our brief with you entirely today. You're quite capable of reading what we submitted, but I did want to highlight some points for you.

The temporary service companies are engaged in the business of supplying temporary help services in virtually every type of business and public institution today, regardless of what you read in the Star a couple of weeks ago. The aggregate sum of payroll paid to temporary workers in Canada in 1995 was approximately \$1 billion. Therefore, the Employment and Staffing Services Association, formerly known as the Federation of Temporary Help Services, believes that the industry must be viewed as a major Canadian employer.

Bill 49 does not in any way, in our opinion, diminish Ontario's current employment standards. It is a thoughtful first step in reforming the Employment Standards Act. We support Bill 49 completely and look forward to participating in stage 2 of the ESA reform.

ESSAC supports basic rights and protections for its workers, and it is our belief that the government does too. We do not believe that Bill 49 will in any way diminish current employment standards and the protection of its workers. It simply speeds up the process.

Bill 49's limitations for claims, recovery periods, proceedings, prosecutions and appeals are reasonable. It is difficult to investigate claims that are brought forward long after the alleged violations occurred. By stipulating that all claims must be brought to the ministry within six months of the alleged violation, Ontario will be in step

with Alberta, BC, Manitoba, Newfoundland and Nova Scotia, all of which have six-month limitation periods.

By setting a \$10,000 limit on claims pursued through the Ministry of Labour, the government will eliminate the disproportionate percentage of resources it requires to settle the minority of claims exceeding this amount. Claims over \$10,000 can and should more appropriately be pursued through the courts. After all, claimants with claims over \$10,000 are not likely the most vulnerable workers. It is the most vulnerable workers to whom the government's resources should be directed.

Currently, an employee can pursue a claim through the ministry and the courts simultaneously or consecutively. This is not an effective use of public resources at a time when the province must rein in its deficit. ESSAC supports the end of unnecessary duplication that Bill 49 would bring about by requiring an employee to choose to pursue his claim either in the court or through the Ministry of Labour.

Bill 49 proposes to empower employment standards officers to resolve a complaint upon the mutual agreement of the parties before the complaint investigation is completed. Presently, officers must investigate a complaint and find that wages were owing before they are able to work with parties involved to settle a complaint. Giving officers the authority to settle complaints at the outset will result, we feel, in greater flexibility and will avoid high costs and delays in adjudication.

Speaking to the collection of owed moneys, it is best left to specialists instead of the employment standards officers. Currently the ministry undertakes collection work, a task which requires considerable expertise and is very time-consuming. About two thirds of orders to pay are not being collected. We would expect a much higher success rate with the involvement of collection agencies. The ministry's resources should not, therefore, be spent on collection. They should be spent on the investigation and enforcement.

The uncertainty that employers and employees have experienced in pregnancy and parental leave rights that are due to ambiguities in the act's current wording will be remedied with Bill 49's proposal to clarify the provisions. Bill 49 proposes to confirm that time spent on pregnancy and/or parental leave will be included in calculating the length of employment or length of service. This is a positive step.

Registered mail as a means to notify parties is not the only means available nor is it the most efficient. Bill 49 proposes to permit the use of newer technologies. Use of electronic means will expedite the filing of complaints and the notification of parties. It is a welcome change that updates the act to reflect today's methods of communication. Giving authority to officers to review electronic records in relation to the alleged ESA violation is also necessary, which Bill 49 proposes to do.

1630

In conclusion, ESSAC submits this brief as the trade association representing proud and responsible employers, and there are still some of us out there. As previously stated, we support Bill 49 in its entirety, as it is indeed an act to improve the province's current ESA, and we look forward to participating in stage 2 of the ESA reform.

The Vice-Chair: Thank you. We have just over nine minutes left, so let's work with about three minutes per caucus, starting with Mr Hoy, please.

Mr Hoy: Thank you very much. I apologize for missing the first part of your presentation. I did note that you've been here quite a bit of the afternoon and have heard many of the points that have been made, particularly around some that you have.

You state that you support Bill 49 in its entirety. We see in this bill that employees at a number of steps throughout the bill and in the course of making claims have to decide about recovery times, whether or not they would go to court, yes or no, depending on their situation, how they're represented. They have to make decisions on what to do about whether a claim's over \$10,000. There seems to be an overbearing shift to where the employees must make a great number of decisions. Do you have any comment about that? That's my observation of the bill, that many of the steps are placed at the employee's feet and there seems to be very little for the employer as far as responsibility goes.

Mrs Mugford: We're involved in a situation on a personal level right now with one of our major clients. If this law had been implemented at the time, what we're going through now with an employee wouldn't have been possible because he would had to have made a claim. There was a claim that is not a true claim; it's the last-ditch effort on his part to be compensated for something that he caused himself. He explored all other avenues and because of the time frame that he had, eventually came back to filing a claim under the Employment Standards Act. It will not go through but it has been a time delay, certainly, and if this was in place, he wouldn't have been given that opportunity. It's causing grief to a lot of people at the moment. So from a personal point of view, that's how I feel. David may want to comment.

Mr Stark: One comment I'd like to make: We're hearing a lot in these hearings about the bad employer and all these anecdotes about bad employers. Let's keep in mind that most employers are good employers, and also I want to make the point that we're not hearing much about bad employees.

A member company of our organization provided a 15-week assignment to an employee who quit after the 14th week of her assignment. She forged a signature on her time sheet, suggesting that she worked the 15th week when in fact she hadn't. Two years later, she is now filing a complaint because that is her right under the act. And really, it's now a question of the credibility of this member organization and the credibility of the employee. Had she been required to file earlier and if she went through that, then I question whether we would be in a situation here where it's a test of credibilities because, after all, it's two years and it's hard to verify the facts. Whereas, if it had been filed earlier, then our member company could simply make a call to the client — Canadian Tire, as the case was — to ask in fact if that employee had worked there. I think the six-month period of time will speed up the process.

One other point I might make, and I know that some workers feel vulnerable and that's why they maybe need the two years to file a claim, if it is fear of reprisal, that their employer might dismiss them or terminate them,

whatever, suspend them, there are laws in this province and an employer cannot terminate someone unless there is just cause and —

The Vice-Chair: Excuse me, I don't mean to interrupt but we're a bit overdue right now and our two other parties still have questions, if you don't mind.

Mr Stark: No.

Mr Christopherson: Thank you for your presentation. I note that on page 3 you were very categorical in saying "We do not believe that Bill 49 will in any way diminish current employment standards and protections for workers." Then on the next page, when you talk of minimum and maximum claim amounts, you only make the case for the maximum; you don't even mention the minimum.

Given that previous statement, I'd like to hear your response to the fact that right now, if an employee is owed \$50, which is not an unusual amount of money for minimum-wage workers to be owed for overtime, vacation pay or some other entitlement that they have worked for, they can claim it. They can call the Ministry of Labour and they will help enforce their right and they will make sure that money is collected for them. They will do that to protect that right.

Under this legislation, Bill 49, that employee cannot if the government puts the line at \$100, \$200, in the case I'm offering, even \$75 — I don't understand how you can make the claim that workers are not losing anything and yet you've got a case where that \$50 is gone because a worker can't hire a lawyer, he's not going to take the time off work. They're going to forfeit it. Basically money they're owed from working has been stolen from them. I'd appreciate your thoughts.

Mr Stark: Under Bill 49, the government, while it has not set a minimum claim, it is my understanding that it is providing I guess the regulatory authority to make a minimum claim, and certainly, if they did make a minimum claim and say that it should be \$75, we would oppose that. Any wages that are owed to an employee should be paid.

Mr Christopherson: I would find it surprising you could think that any government would put in place the regulatory powers and then not plan to use them. At some point, they're going to bring in a minimum and people are going to lose something.

I'd like to extend the argument to another point: the limitation process that you spoke of. I notice you mentioned Alberta, BC, Manitoba as being other jurisdictions that have the six months. But the fact is that there will be five jurisdictions left over that are higher after Bill 49's in place. I think that makes the case that this is a race to the bottom. This government looks around and says "Who has the lowest standards anywhere that we can compare ourselves to," and then races over to that. The fact is, 90% of all claims are made after people leave employment because they are worried about recrimination, and the fact is, they can't get their job back if they're fired through the current Employment Standards Act and this won't change that. Again, how can you support the limitation periods as contained in Bill 49 and still say there are no rights being taken away?

Mr Stark: Simply because I honestly believe that there are protections in the act for employees and that

what the government's doing is not diminishing them. They have six months to file a claim. That's a reasonable period of time. Other governments in the country have obviously agreed with that line, including the BC government, which is headed by an NDP government.

Mr Christopherson: Not the point. The point is that if another jurisdiction makes it lower again, is it okay for this government to race to that bottom too? Is that the game we're into, sir?

Mr Stark: I don't think that's the game we're into. We're into the game of —

The Vice-Chair: If we could proceed, please. Again, time has expired.

Mr Tascona: Perhaps we can use our time that Mr Christopherson decided to use.

The Vice-Chair: We'll be using government time at this stage, a three-minute allocation.

Mr Tascona: Thank you for your presentation. I take it that a major asset for your employer groups is that you have satisfied and good workers, since the average duration of their work period is about three weeks. Is that correct?

Mr Stark: Yes.

Mr Tascona: It also would appear that you're very active in terms of educating your employer groups about the Employment Standards Act. What has your groups' experience been with the employment standards?

Mrs Mugford: We've certainly had some areas of frustration which is why we're extremely glad right now that it is being reviewed. Sometimes we're in a contrary position between the Human Rights Act and what they're telling us to do and what employment standards are telling us to do. But we can get into that at the next session. We're very involved with often interpreting the act, especially for our smaller companies that may not have a human relations director on board.

1640

Mr Tascona: With respect to the changes in enforcement and compliance which are designed to protect workers, are you satisfied with the changes that have been made under Bill 49?

Mrs Mugford: I've been in this business 12 years. The only experience I've had personally in this is because it was somebody who had a justified complaint and was an honest employee could proceed with it. The ones who didn't were because there was some question as to the authenticity of what they were trying to report.

The Vice-Chair: There's one minute and 20 seconds left, if anybody chooses to ask. Seeing no questions, thank you very much for coming today.

UNEMPLOYED WORKERS COUNCIL

The Vice-Chair: I would ask that a representative from the Unemployed Workers Council come forward, please. Good afternoon.

Mr John MacLennan: Good afternoon. Just give us a second to get ourselves set up here. As you can see, we've brought a few friends.

The Vice-Chair: No problem. For the sake of those in attendance, I would ask you to please introduce yourselves and proceed with your presentation.

Mr MacLennan: My name is John MacLennan. I'm the coordinator of the Unemployed Workers Council. We've just come from a founding conference of the Unemployed Workers Council. With me are Teresa Dow, Valerie Packota, Beatrice O'Byrne and Terry Kelly. I'm going to ask Valerie to read a resolution that we have adopted.

Ms Valerie Packota: "Resolution Concerning Bill 49: "Whereas Bill 49, the Employment Standards Improvement Act, introduced by the provincial Tory government, will make it more difficult for Ontario workers to get their minimum employment rights enforced by making it more difficult for workers to be able to make claims for moneys owed to them by bad bosses;

"Whereas the Tories have also declared that Bill 49 is the first step to eliminate basic minimum employment rights for both union and non-union workers in the areas of minimum wages, hours of work, statutory holiday pay and overtime;

"Whereas the first job of all governments should be directed towards full employment policies and strategies to assist the more than one half million unemployed in Ontario get decent-paying jobs;

"Be it resolved that the Unemployed Workers Council calls on the Ontario government to:

"Drop Bill 49 and to stop all plans to deregulate employment law in Ontario;

"Improve employment standards laws to improve the conditions of Ontario workers by raising the minimum wage immediately to \$10 per hour, provide more paid protection for sick leave, establish just-cause legislation to protect workers from indiscriminate firings by bad bosses and establish equal pay rights for part-time workers;

"Provide decent-paid work or income now for Ontario's unemployed."

Mr Terry Kelly: As you can tell by our resolution, we've obviously just organized ourselves for the first time here in Metro Toronto. One of the reasons we organized ourselves was in the past we've listened to politicians and governments, including this government, the Harris government, the Tories here, the federal government, and you have all said you spoke for the unemployed and you have a solution: You're going to create jobs. You were going to create 725,000 jobs. After a couple of years it's obvious you have no intention of doing that.

This bill has got nothing to do with job creation. All it's going to do is lower the living standards of working people. It's going to make a miserable existence for hundreds of thousands of Ontario workers who are unemployed. It's going to make their situation even worse because workers who are working without any kind of bargaining unit protection are going to be in an even worse situation. To try and tell us that employers today are going to be negotiating fairly, whether it be hours of work or vacations, with employees is absolutely absurd. It's a very sour joke.

What is needed here and what we're demanding is not a program or policy of austerity, as this government has been putting forward, but is one of full employment. The only way of attaining 725,000 jobs over the life of this Tory government would be if you instituted such a

policy. You haven't done it till then, and from now on, from this day forward we're going to hound you.

We're going to do another thing. We're going to do exactly what we did with your federal partners, the Tories under Mulroney. In the last election we put them out of existence. There isn't one elected here. Come another couple of years when you go to the electorate, the voters in this province are going to follow you around and you'll follow the way of the dodo bird, into extinction.

Mr MacLennan: I just want to make a final comment. I guess you can understand that maybe we have a few emotional upsets about the way the situation is. This is the first opportunity we've had to speak to a government committee. We are really concerned about the situation. The laws were bad enough as it was without the changes that are being proposed, because they weren't enforced and they needed to be improved. The situation, if you go through with these changes, will make it worse.

We want to take this opportunity, as an organization, to put you on record that we'll be back, that we want jobs and that we're not prepared to wait. We want jobs now and we demand that of all governments, the provincial government, the federal government and the municipal governments, and most of all we demand it of the Tories. Now that you've been in office for 15 months it's time enough. We don't want jobs that are minimum wage; we don't want jobs that are McDonald jobs; we don't want people forced on welfare; we want jobs that are good so that we can keep our families above the poverty line. That's where we're at.

I'd like to thank you for this opportunity to speak here today.

Interruption.

The Vice-Chair: Excuse me. Please put down the banner.

Interruption.

The Vice-Chair: If we could have some order, please, we could finish our presentation.

Interruption.

Mr MacLennan: Could we get the banner back, please? I think we've made our point.

The Vice-Chair: That won't happen, sir.

Interjection.

Mr MacLennan: What do you mean, "trespass"? This is public property. This belongs to the people of Ontario. Hold on. I'm making a presentation here. What's going on here?

1650

The Vice-Chair: For those people who would like to continue, the place to address the panel is right where you were. I ask you if you would like to address the question-and-answer period. Would you like to finish the time remaining within your period?

Interruption.

The Vice-Chair: I ask those who are making the presentation if they would like to finish the time allocation for the presentation today.

Mr MacLennan: I would like the assurance that we'll get our banner back. You have to understand that we are people who are unemployed, looking for work. Some of us have been out of work for three years. I don't want to have another incident regarding the OPP. I think they have enough black things as it is against their name.

If the Chair would just make sure that we get our banner back right now. He says he is not going to give us it back. He's confiscating it.

The Vice-Chair: Sir, that is not with in my jurisdiction to do. If you would like —

Mr MacLennan: Could I have a recommendation from you that we get our banner back?

The Vice-Chair: If you would mind sitting down for just a moment, we can deal with how we can deal with the banner. The protocol of hearings follows the same protocol as that of the House. Within the House, banners are not acceptable. When the banner went up I asked for the banner to please come down. Nobody either was able to hear me or did drop the banner. As a result of that, it is normal procedure for what just happened, as it is the same procedure in the House. You will have to deal with that with the security people, who just removed the banner, once you leave this hearing process.

I stopped the time while I was explaining this position. I would be more than happy to allow us to finish the presentation time if you want to do so, which would allow us just over five minutes to share with the three parties in terms of the question-and-answer period. I would be very pleased to entertain that possibility, if that's what you want. If you're not interested in answering questions, then you may either expire the clock by continuing to do presentation or —

Mr MacLennan: Could I just ask Beatrice to say a few words.

Mrs Beatrice O'Byrne: I just want to make it clear that you need to know that we know the agenda of this government. It's not the agenda of the people. We want a democracy that is of the people from the bottom up. This government is being ruled by a corporate agenda and we are not going to accept that. We're being sold a lie and we're going to make people aware of that lie. You were put in position to work for the people, not to act on your own agenda. I think that is an important issue you need to hear here today.

The Vice-Chair: Okay. We still have just under five minutes. If you'd like to proceed with the question-and-answer period, the time will be evenly split between the parties, or if you would like to call that the conclusion of your presentation.

Mr MacLennan: I guess we'll go to questions.

The Vice-Chair: Okay. So hearing, we will allocate a minute and a half, and I ask you to respect that time parameter.

Mr Christopherson: The first thing is, could I ask for unanimous consent that we pass a motion that says we'll ask the security people to make sure the banner is returned? Let's not make a big deal out of this.

The Vice-Chair: I guess it's not something done by motion. If you would like me to ask the panel if consideration will be given that way and if the panel —

Mr Christopherson: All I want is unanimous consent.

Mr Peter Kormos (Welland-Thorold): Agreed.

The Vice-Chair: Please, let me finish my sentence. I the panel agrees unanimously, I will make a request of the security people to return it. Everybody agreed? May I see a show of hands, please? Okay, I'll make that request.

Mr Christopherson: First of all I want to thank all the people who are here, because you're telling this government exactly what we've been trying to tell them in the House, that you cannot continue to attack the most vulnerable people in the province and expect people to lie back and allow themselves to be run over like that.

I want to acknowledge the presence of my colleague Peter Kormos who, I understand, was at your conference earlier today and participated. You know you can always count on people like Peter Kormos to be there for you in that fight.

Also, I want to get on the Hansard record that apparently Bobby Jackson is here. In 1935 Bobby Jackson was part of the original trek to Ottawa. Stand up, Bobby.

The Vice-Chair: Thank you very much —

Interruption.

The Vice-Chair: Excuse me, sir. If you would like to make presentation to the committee, you can do so by applying through the clerk's office to be on the agenda.

Interruption.

The Vice-Chair: Mr Baird, you have one and a half minutes.

Mr Baird: I would just indicate, more as a comment than a question, that we as a government certainly share your strong concern, though not in the personal way that you each would have, that job creation has got to be a top priority. It has been the focus of our activities and initiatives.

One of your presenters mentioned the number, 725,000 new jobs, which is what this government promised during the election campaign. So far the Ontario economy —

Interruption.

Mr Kormos: John, please.

The Vice-Chair: Excuse me. Would you please give the same respect —

Mr Baird: I pass.

The Vice-Chair: Thank you. Mr Hoy.

Mr Kormos: The lie meter was going there.

Mr Hoy: Good afternoon. I appreciate your presentation. I have people coming to my constituency office who are also unemployed. I met a fellow not very long ago who hasn't had a job in four years. This is not only restricted to adults. The student population is very concerned about jobs. I have two in my family, but one was not successful in getting a summer job. They're both in university and they're very curious as to whether they will get employment when they've finished their education. There are no guarantees even at that level. I appreciate your concerns and having you here today.

The Vice-Chair: I would like to report about the return of the banner. The decision by the security people has been that they will pass it over to you upon leaving. Thank you very much for your presentation.

1700

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79

The Vice-Chair: Would the representative from CUPE, Local 79, please come forward.

I ask those who would like to stay to please be seated. There are others who are also trying to make a presentation here. Are you okay for a few minutes?

Ms Anne Dubas: I'm okay for a few minutes.

I don't have that much energy.

The Vice-Chair: Welcome to our hearing process. I would appreciate very much if those in the room would introduce themselves.

Ms Dubas: I will introduce them for you, if you don't mind, Madam Chair. I would like to thank both you and the members of the committee for the opportunity to appear before you. Muriel Collins is a long-standing trade unionist, primarily with our particular local, CUPE Local 79. Margaret Watson is one of our researchers with Local 79.

We did get misguided into room 151 for a few minutes and got an excellent lesson on Rousseau, not too far off where we're all hunting for. Everybody has their own element of work.

I'm Anne Dubas. I'm the president of Local 79. Local 79, at this particular time, represents a little over 9,000 members in the city of Toronto, Metropolitan Toronto and Riverdale Hospital. When the municipal government starting downsizing four years ago, we had over 10,500 members, so we are fully aware of what happens in the real world. In fact, you may have been aware that we were the ones that were going to shut down Metropolitan Toronto up until a few days ago, because of course, as you know, you have water up here and we supply the water. You have toilets, to put it quite bluntly, and we take care of that. We run the Gardiner, the Don Valley, the stoplights, the traffic lights. You name it in Metropolitan Toronto, in the city of Toronto, and we are it.

We have been a union for more than 54 years and we have taken the role of our responsibility of representing our members very strongly. In that 50-year history — 54 really; 1942 is when we got our charter — we have had one strike of eight hours. We take very strongly and with great pride the work we provide for the community. When this particular government came in, we were devastated, and I'll be quite up front about that. Our members, yes, they voted for you, and many of them worked hard against this particular government. What is happening, and we're seeing it not just in the homes for the aged where we have workers, or in the 55 day care centres where we provide work, or those areas that I've just mentioned, whether it's communicable diseases, public health, environmental health or the regular clerical work — planning departments — we know what is going on and we see the effects of these proposed changes to the Employment Standards Act as really bad. We see what will happen in the community to those taxpayers to whom we provide services.

I would like to point out that I am going to expound only slightly on the letter we wrote on July 31, 1996, which the clerk has handed out. I will leave it for you for your records. As I mentioned, we won't have a full 15 minutes.

As you know, we find bargaining very difficult. With the kind of clout I've just described, the proposed legislation and the original would even devastate a union as powerful as us, so that those people out there who don't even have the right of having a union or are unable to get union representation would be devastated even more. These changes to the Employment Standards

Act — An Act to improve the Employment Standards Act — we find very difficult to believe.

Recently, as you know, Anne Golden presented a whole report on restructuring the GTA which would eliminate metropolitan government. When we read the report we also looked upon what the future is, and one of the strengths of just the Metro area was the good working conditions, the good workforce, the ability of the workforce to meet the needs of the present and move into the future. Your proposed changes would destroy that. If this government is going to attract business — primarily, we hope, to the Metro area, because that of course ensures work for our members — if we're going to attract people — you're talking to Germany these days. They work very closely with their unions. They don't bash them. They don't try and destroy the working conditions that exist in Europe. They try and improve them.

What is happening with this? If you look at it, what the current Employment Standards Act provides is a minimum in labour standards. It's a legal floor for workers' rights in a wide range of vital workplace issues. They discuss everything from overtime pay to statutory holidays, minimum wages, meal breaks, pregnancy and parental leaves, entitlements to termination and severance provisions. That is what will be the minimum and should remain the minimum, with improvements through this government, not destruction. It is through those improvements that you are going to have a better, dedicated workforce. Without that, you're not going to attract the industry and the business to Ontario, and hopefully primarily to Metro.

The proposed changes to subsection 4(2) of the act would eliminate this floor by allowing employers and unions to negotiate issues such as hours of work, overtime pay and public holidays as long as the package as a whole provides rights greater than those found in the act. What I tried to show at the beginning of my presentation was that even powerful unions would have difficulties with the changes you're doing. The Minister of Labour introduced these changes as part of the call for increased flexibility and self-reliance in the workplace, but we believe they can be more aptly referred to as, "Let's make a deal." What happens to those people out there who can't make a deal? There goes your dedicated workforce.

Minimum benefits that have been taken for granted by employees and unions and society at large will be thrown into bargaining. This is not self-reliance. These are changes that would give employers more bargaining power to eliminate the right of employees to the very basic protections. We don't want to be Alabama. Alabama does not provide the ideal working conditions that this government professes to believe they should have. We know that the minister announced that she will withdraw this section of Bill 49, but she's promised to reintroduce it. She has not given up on it. She's going to reintroduce it in the upcoming comprehensive review of employment standards. It's got to be killed now and forever. You've got to have the minimums upon which you can build.

There are other proposals in the current legislation that would be a serious setback for workers' rights, and that's

what the rest of our presentation is all about. The legislation proposes a reduction in the time allowed to file an employment standards claim from the current two years to six months. This is a regressive move for several reasons. Many workers fear that they will be fired if they complain to the ministry. They must often wait until they've found a new job before filing an employment standards claim. The six-month limit will force workers to choose between enforcing their rights or keeping their job. You heard the presentation before us. People want jobs. They shouldn't be forced to make those kinds of decisions.

1710

Other workers, the most vulnerable, may not be aware of their rights and what they're entitled to do. The six-month limit would give unscrupulous employers the very loophole they need to limit their own liabilities and profit on the back of the poor, the working-class poor who profess to want to represent. The working-class poor don't understand legislation. Our members in Local 79 work with these people in the community — as public health nurses, as welfare visitors, in the day care centres where you deal with the working-class poor.

The next issue I want to raise is that the legislation proposes a minimum amount for employment standards claims, to be set by regulation, and a maximum limit of \$10,000 on recovering money that employees are owed. You're letting employers off the hook. Even the most poorly paid workers have had claims larger than the \$10,000, but with these amendments they would have to choose between filing a claim for less than what they are owed or a lengthy process of going to court which they can't afford, especially since there is no legal aid for employment law. What are these guys going to do? Are they going to sit on your doorsteps as you try and protect them from the very legislation you implemented? Silly.

On the other hand, establishing a minimum amount would mean that employers are free to violate the act if the amount of money at stake is sufficiently small. This can only lead to an increasing disrespect for the act's minimum standards and guarantees. Watch what you do. If you really believe in it, then don't screw it up. Meanwhile, leave it out. You have a good system here now that was developed over the years by your predecessors — not that it doesn't need improvement.

The amendments would also deny unionized workers the right to make a complaint involving employment standards through the ministry and its employment standards officers. Instead, the union would have to file a grievance. We already have enough difficulties between employers and employees. Again, the economic and business climate — you wish to see employers and employees working together, not turfing it out on a daily basis. This shifts the responsibility and the cost for enforcing legislated standards away from the government you're offloading again. Such responsibility really belongs with the government. It is you people who have to provide the minimums across society.

One minor note: I have to say there is something positive in your package — it is our role in a union to always dig as deep as we can to find something positive — and that is the proposed change in the pregnancy

and parental leave provisions. I hope that just because we've raised the issue you're not going to drop it. This will clarify a very troublesome ambiguity in the act, making it clear that the length of service and entitlements related to seniority will accrue while persons, particularly females, are on pregnancy or parental leave. They shouldn't be penalized for that.

We believe that Bill 49 could set back the rights of Ontario working people by decades because it will alter the fundamental principle that there is an absolute set of legally enforceable standards to which all employers must and will be held. It is that equality you are taking away. Non-unionized workers in particular could be subject to extreme pressure as employers begin to realize the kind of power you would be handing to them. The gap between unionized and non-unionized workers' ability to enforce their rights will just grow and grow. But the strain on the human and financial resources of unions like our own — and by the way, with 9,000 members, I am the only paid person in the union. The rest of my executive are volunteers; the other 25 volunteer. The 168 stewards are volunteers. The clerical people are paid. We're not talking about this big monstrous thing that we have.

I'm concluding. It is an expensive process, the grievance and arbitration procedure, and so is collective bargaining. If you look, we have been in collective bargaining every single day since the first Monday in June. That's how long it took to negotiate with the city of Toronto and Metropolitan Toronto. It turns over to us your responsibility for enforcing standards and will no doubt spill over into lengthy, bitter labour disputes across the province. If we can't, then what about the smaller unions, your smaller communities, as they take up their fight with your local councils and yourselves as you go back to your own turf?

Unions and working people never asked for what this government is calling "self-reliance." Exactly the opposite. We rely on the Employment Standards Act and government enforcement to make the principle of minimum standards a reality. We urge you, this committee, to reject completely the direction that is being set in Bill 49 and to recommend amendments to the Employment Standards Act that will be actual improvements to the working people's rights here in this province.

Applause.

The Vice-Chair: If I might interject, the time is now 14 minutes and 54 seconds, which does not leave any time for a question-and-answer period. However, we thank you for coming forward today and making your presentation.

1720

ONTARIO LIQUOR BOARDS EMPLOYEES' UNION

The Vice-Chair: I would ask that a representative of the Ontario Liquor Boards Employees' Union come forward, please. Good afternoon. Welcome to our hearing process. I would ask for you to please introduce yourself for the good of all present.

Ms Julia Noble: Sure. My name is Julia Noble. I'm with the Liquor Boards Employees' Union and I'd like to

thank you for the opportunity to address you in person today. I appear on behalf of 5,000 of our members. Our members are crown employees and also employees of small private sector employers.

We're deeply concerned by one aspect in particular of Bill 49. I'm just going to talk about one thing in particular today to you, and that is the provision that will not allow an employee to whom a collective agreement applies to file an employment standards complaint. As you know, section 20 of the bill takes away a person's right to file an employment standards complaint and it charges the person's union with enforcing the Employment Standards Act instead.

We're opposed to this change in the act for two main reasons. The first main reason is that this change would be totally unworkable for our union. The staffing complement at our union is also small, as the last presenter was saying. Her staffing complement is small; so is ours. Ours consists of five full-time staff members and five support staff. Each staff member is currently completely occupied with his or her job representing our members. All of us clock hours of unpaid overtime as it is. No existing staff member at our union is able to take on a new caseload in a new area such as employment standards.

Also, our union staff does not have the training and we don't have the experience required in the area of the law and jurisprudence relating to employment standards inquiries and appeals. Employees at the employment standards branch have that knowledge and experience. That's what they do. Furthermore, employment standards cases should be decided by employment standards adjudicators who have expertise, not private labour relations arbitrators under the grievance procedure, as Bill 49 proposes.

Unions are non-profit organizations. Our union has a full staffing complement, taking its resources into consideration. We are not in a position to pay private arbitrators to resolve disputes under the Employment Standards Act or to hire another staff member to take over the work of employment standards enforcement.

That is a firsthand point of view from the perspective of a real union that you would really affect by changing this act. The work that we're talking about has always been done by the employment standards branch of the Ontario government, and it should continue to do so.

I've read Bill 49, and nowhere in that bill is the issue of resources addressed. My union is not in favour of contracting out, but I think the irony of this bill is that it doesn't even propose contracting out the enforcement of the Employment Standards Act because contracting out is something you actually have to pay for. There's just no mention of resources or how this is going to be done in the bill. The bill sidesteps the issue of resources altogether.

For these reasons, and because our union does not have the resources to take over this type of enforcement, this section of the bill is unworkable. I submit to you that the government has the resources to enforce the Employment Standards Act. It is the government's job to do it and the government has to do it.

The second main reason that our union is opposed to section 20 in this bill is that it is totally unfair for our

members. Our members are taxpayers in Ontario. The government of the day is their provincial government. It is you, as the provincial government, who are charged with enforcing the laws of the province on behalf of the citizens of Ontario. That means all the citizens, not just a few citizens, not just the people who don't happen to be unionized at one particular time. If this proposal becomes law, the government is basically saying to 5,000 people who are our members and other people in unionized environments as well, "When it comes to employment standards, we are not your government."

I submit to you with all due respect that this is irresponsible. What could be more fundamental to the role of a government than to uphold the laws of the land? Bill 49 proposes that the government will back away from this fundamental responsibility to uphold the law as it is enshrined in the Employment Standards Act of Ontario. This aspect of the bill quite frankly gives the appearance that this government does not care about law enforcement in this province.

In summary of all my points, we are opposed to this aspect of Bill 49 because it is unworkable for unions; it is unfair to our members, who are Ontario taxpayers; and it gives the appearance that the provincial government does not care about enforcing the law in Ontario. We urge you to amend the bill by removing section 20.

I'm sure that you've already had several hearing days and you've probably heard views similar to mine expressed before you, especially from the labour movement. I'm willing to certainly entertain any questions that you have about this in particular. But in the event that you don't have any questions, I would like you to answer my questions. I have two questions.

First of all, how is a union to find the extra resources necessary to take over the task of enforcement of the Employment Standards Act of Ontario? Secondly, how can the citizens of Ontario be reassured that the government cares about law enforcement when you've specifically indicated that you're unwilling to enforce this law against unionized employers? I'd be really happy to hear from people who support this bill on those two points.

The Vice-Chair: To put things in perspective, we now have about seven minutes left. The procedure normally is to allow the three parties to divide that time equally and to ask questions. I would think that if we do that and there is time remaining at the end, perhaps it might be then appropriate to answer the questions. If not, we could, I'm sure, find a way to ensure that the answers are forthcoming to you. I will, however, ask for input from committee members as to whether or not and how we would like to proceed, and I will stop the time while we're doing that. Is it the wish of those present to allow the answers to the two questions now and then divide the remaining time evenly?

Mr Christopherson: On behalf of my party, if the presenter would prefer to have that kind of dialogue with the government and the government is prepared to stay within the framework of those two questions, then I would certainly be willing to give up our time to let that happen.

The Vice-Chair: Do you agree, Mr Hoy?

Mr Hoy: Yes.

The Vice-Chair: Okay, we have six and a half minutes left and we'll proceed to answer those questions.

Mr Baird: Thank you very much for your presentation and questions. Your first question was with respect to how a trade union would find the necessary resources in order to accomplish the requirements under this bill. The vast majority of complaints from unionized environments with respect to the Employment Standards Act are already administered by the act. For example, how many Employment Standards Act complaints would be taken by your union through the employment standards process? Would you have any numbers on that?

Ms Noble: We tend to not get involved in that at his point.

Mr Baird: So if an employee were to come to you and say, "I'm supposed to make \$18 an hour and my boss is only paying me \$4 an hour," you would say, "I'm sorry. I can't help you," and send them to the government?

Ms Noble: This would pertain particularly to smaller, private sector workplaces. An employee who had a valid complaint under the Employment Standards Act about something that was not also covered in the collective agreement would go on their own to the employment standards branch, file a complaint and it would be handled that way.

Mr Baird: As their agent, your union would not in the normal course of activities represent them?

Ms Noble: As I would assume you're aware, a union enforces a collective agreement that it negotiates. It doesn't enforce the Human Rights Code. It doesn't enforce the Criminal Code of Canada. It doesn't enforce the Employment Standards Act. The government enforces those laws.

Mr Baird: The Employment Standards Act wouldn't form part of your collective agreement with respect to wages, with respect to vacation pay, with respect to holidays?

Ms Noble: That's right, it wouldn't.

Mr Baird: So if I was a member of your union and my employer was refusing to give me any vacation time you as a union would not represent me to the employer to say, "Listen, this employee requires three weeks" —

Ms Noble: As I explained to you, this would become an issue when an employee has a problem that is an employment standards problem that is not also covered by a collective agreement. And, yes, that happens.

Mr Baird: Give me an example.

Ms Noble: An example would be in a small workplace where the union had not negotiated, say, a minimum vacation entitlement, so the floor for that benefit would be provided by the Employment Standards Act. If there is a violation by the employer, the employee has recourse under the act, not under the collective agreement.

Mr Baird: Can you give me one single example in the province of Ontario where vacation pay has not been part of a collective agreement?

Ms Noble: What I can tell you, Mr Baird, is that there have been lots of times when employees who are members of our union have gone to the Employment Standards Act and asked the employment standards branch to enforce the law, and that has been done.

Mr Baird: Sure. But is there one collective that you're aware of anywhere in the province of Ontario any time in the last 25 years which would not have contained provisions with vacation pay?

Ms Noble: You asked me for an example.

Mr Baird: I did, and that's the example you gave me, so I'm just following it up.

Ms Noble: That's the example that I gave you off the top of my head. You're going to have to believe me that I wouldn't be here saying that this is problematic for our union if it weren't something that had come up in the past.

Mr Baird: Your question was, how would a union find the necessary resources to complete this?

Ms Noble: I feel like I'm — could someone else maybe answer one of my questions, because —

Mr Baird: No, that was your question. Your question was, how would a union find the necessary resources to administer the Employment Standards Act?

Ms Noble: And you're trying to say that this isn't a problem?

Mr Baird: I asked for an example where any employment standard would be taken to the employment standards office that wasn't covered in a collective agreement. You gave me the example specifically of vacation pay. I'm asking you, is there any collective agreement anywhere in the province of Ontario for the last 25 years that wouldn't include that?

Ms Noble: Could I stop you? Because my time is running. How about this? May I get back to you —

Mr Baird: Certainly.

Ms Noble: — and provide you with examples of complaints that have been filed where the employment standards branch has been the enforcing mechanism, not the union?

Mr Baird: In particular with respect to vacation pay, that would be interesting.

1730

Your second question was, how can the citizens of Ontario be comforted that we are serious about law enforcement when we won't be enforcing some laws? I guess right now today, for the last five years, we haven't been enforcing the Employment Standards Act with respect to orders that are issued. Right now and for the last five years it's been at 25 cents on the dollar, or worse in some years. Once an investigation takes place, once an order is issued, someone has been found guilty and the appeal period has expired, workers are only getting 25 cents on the dollar on average; 75% of orders are not being filled right now. So there's an example where —

Ms Noble: That doesn't answer my question.

Mr Baird: I'll continue. There's an example where that hasn't happened, where the government hasn't been enforcing it.

Ms Noble: So you're saying because it's been badly enforced in the past, it's not going to be enforced at all now?

Mr Baird: No, no. I'm just —

Ms Noble: That's completely irresponsible.

Mr Baird: Just follow me. I'll give you an example. What we're seeking to do is to try to give more flexibility to the workplace parties, to put more responsibility to

the workplace parties. We did hear from CUPE Local 87 in the city of Thunder Bay. When I brought up the example of how right now in Ontario we're only collecting 25 cents on the dollar — that's been the case for many years under this government and both previous governments which have made attempts to —

Ms Noble: And you're proud of that? Is this an answer to my question?

Mr Baird: No, I'm not proud of it; I'm ashamed of it. That's why we're making —

The Vice-Chair: Excuse me a second here. What we agreed to do, if I recall, was you asked two questions to be answered. I think it's only fair that we then allow those questions to be answered and then maybe —

Mr Christopherson: He doesn't answer the question.

Mr Baird: I'll answer it if you let me continue.

The Vice-Chair: Excuse me. It is not normal procedure and I asked the wishes of the committee. We all agreed that the remaining time would be spent as best as somebody at this table could respond to the questions would be doing so. It doesn't mean we have to agree on the answer. What it means is that there is a time allocation, which everybody forfeited, in this case to Mr Baird to respond. There is one minute left in that response time and all I ask is that we allow for that to happen, agreeing that we don't all have to agree.

Mr Christopherson: It would be nice if in that one minute you gave one straight answer.

Mr Baird: I'll finish responding to the question. Why would we ask the trade unions to enforce the law? Because they are best able to do so. We talked to CUPE Local 87, the city of Thunder Bay. He said that his claims rate is 100%. Another local we said, listen, they're on the ground, they're on the shop floor, they know the workplace best.

We spoke to a former Algoma Steel worker in the city of Sault Ste Marie, Mark Klym, who on August 27 said the large unions are capable of taking care of their members. This is what we've heard during these committee processes —

Ms Noble: Well, you're not hearing it from this union.

Mr Baird: I look forward to getting your response. If you could forward it not just to me but to the clerk so that all the members of the committee could have it, I'm sure we'd be very pleased to receive it.

Ms Noble: My response to what?

Mr Baird: You said you would get back to us with a specific example of where vacation pay isn't covered in a collective agreement.

Ms Noble: I see. I must say I get the distinct impression that in the presentation I've made on behalf of my union, my credibility is being challenged here by Mr Baird. I'm making this presentation in all honesty and with all sincerity. I'm telling you the perspective from our perspective and that of our 5,000 members, and I don't appreciate having my credibility challenged in this way. Do you think if this law helped us I would be here making this submission?

Mr Baird: I look forward to getting your response to the questions.

Mr Christopherson: It's like that all the time. Trust me.

Ms Noble: How can you stand it?

Mr Baird: On a point of order, Madam Chair: I'd like to make a research request. Could we find any collective agreement in the province of Ontario where vacation pay has not been included, any collective agreement anywhere in the province of Ontario in the last 25 years?

The Vice-Chair: Would all committee members support the request?

Mr Christopherson: Do you need unanimous agreement to that?

The Vice-Chair: No, I don't need unanimous agreement for that. Just a moment, please.

As a point of order, we will make the request to the research department and we'll hear back whether or not it's possible to obtain that information.

Mr Christopherson: Are you going to make that request in writing?

Mr Baird: I'm happy to.

JOSEPH HEALY

The Vice-Chair: I would ask that Joe Healy come forward, please. Good evening. I would ask for those present — I guess I have identified you, seeing as you represent yourself. I don't know if you're familiar with the process, but in short, there's a 15-minute presentation time. If there's any remaining time at the end of your presentation within that 15-minute scope, we divide the time evenly for questions and answers for all parties.

Mr Joseph Healy: Very good. Initially I was going to read verbatim from this, but seeing how the proceedings have gone, I'm probably going to edit from this, so you'll have to bear with me.

Good afternoon. My name is Joseph M. Healy and I'm a concerned citizen. I'm an employee of the Toronto Hospital in the field of medical technology. Presently I sit on the complaints committee of the CMLTO, which is the College of Medical Laboratory Technologists of Ontario, which is my professional college. I will take a seat as an elected member in January 1997.

The name of this bill confuses me. "Improvement" normally means that those affected will see a benefit. The Employment Standards Act provides a certain minimum level of protection for employees from abuse by their employers. Therefore, an improvement should see an increase in that level of protection, not a dramatic removal of those protections.

For myself as a working medical technologist, I see primarily harmful items in this bill. If this is house-keeping, then I am very worried about the major changes to come later.

The laws of this land were built over time. They are to prevent the horrors of abuse that society cannot allow to continue. The labour laws have changed over the years in a similar manner. Labour laws are to ensure that confrontations between labour and employers be carried out in a manner that does not disrupt society's functions. The violence that in the 1930s we saw cannot and should not be repeated. The present labour laws have prevented most of those excesses from happening.

When a large group of people feel they can no longer benefit from society's rules, they have three options: (1)

They can hope it goes away, which just usually leads to frustration and to greater pressures when it finally explodes; (2) they can move to either change the laws or the government by legal means; (3) they can move to change either the laws or the government by non-legal means.

I'm here today as part of that second option. From what I've seen, I don't believe it will be successful, and I'm afraid that when you are stripping rights from those who presently have them, they will then resort to option 3. When this happens, I truly hope they will follow Gandhi's methods of non-legal civil disobedience rather than those espoused by Malcolm X, which is basically by any means possible.

The proposed changes to the act will make it easier for employers to cheat their employees and harder for workers to enforce their rights. It strips unionized workers of the historic floor of rights that they have had under the Ontario law for decades. Workers will not be denied these rights without a fight. The level and severity of that struggle will be determined by the laws that allow workers to fight for them within the law. If there is no effective means within the law, then that struggle will go outside the normal relations. If you pass these bills as is, labour will have no other option than to move outside the realm of normal legal recourse.

The following captures part of my views on the key amendments:

(1) Flexible standards: The very idea of a flexible standard is an oxymoron if I've ever heard one. In laboratory medicine I work with standards all the time. My duties as a college committee member mean that I have to ensure that those technologists who fall below the standards of performance are brought to standard. These standards of practice are written in black and white. They are not subject to flexibility. A minimum standard is an immovable marker that one must not fall below. A standard cannot be flexible. It is either a standard or it is flexible. It cannot be both.

The proposed changes remove the minimums as standards and replace them with nebulous statements such as "confer greater rights...when assessed together." Who decides the "greater rights...when assessed together"? What is "greater rights...when assessed together"? I'm afraid this will become a situation where two wrongs will become a greater right when assessed together. This portion of the act is a danger in itself. It encourages the point of view that the law is simply a guideline, that it can be bent or even disregarded.

1740

Society requires a fixed minimum standard to exist. If there are no minimum standards, then where will you start to negotiate under the act? The flexibility will allow employers to use this act as a ceiling for employees. The act should be a floor. The Employment Standards Act has held labour relations in a stable condition for as long as I and the bulk of the workforce have been alive. This act will destroy those conditions.

The first labour councils marched in Toronto 125 years ago. We celebrated the anniversary on Labour Day. They marched for a nine-hour workday. Your proposals are removing that, so you're removing rights that workers

have had for over a century and a quarter. People will not stand for that. This act will destroy those conditions. This act encourages that the laws be bent or broken. Its measures erase the historic component of overall minimum standards in the workplace for unionized workers. Employers are now free to disregard the previous floor of rights. They can attempt to trade off such provisions as overtime pay, paid holidays, vacation pay and severance pay in exchange for increased hours, increased duties, increased fears and worries. All they have to do is scare their employees into doing anything.

In my profession as a medical technologist, I am subject to an enormous number of rules and regulations. They control my work, my performance, the standards that I must live up to. Unfortunately, the only protections I have concerning my hours of work and other working conditions is my collective agreement, the Labour Relations Act and the Employment Standards Act.

Due to your recent introduction of Bill 7, I've lost many of the rights and protections I previously enjoyed. This makes me more inclined to support actions that are more political in nature than would be normal in a labour-management relationship.

The greatest fear you should have right now is not the group that came in here and protested earlier. They will always be here, they will always protest, because that is their right and they advocate. What you've got to be scared of is when people like me, who come in here in a job as a working professional, come in here and have to stand up and denounce this in front of you. I am the type of person — I am the professional in Ontario. Normally we should be an ally in a government like yours, but we cannot. This bill will mean enmity, and it will mean basically that we will not have peace until either this bill goes away, you go away or, preferably, both go away.

The labour movement is becoming more polarized. Under the Davis Tories, the idea of an economic shutdown of a city for a day was a joke; it only happened in other countries. Labour is now considering a general strike. It would have been laughed away as the pipedream of a few diehard anarchists and Communists a few years ago. But this is the reality that this government's policies have unleashed. Four previous cities have been economically shut down. The economic engine of the province, Toronto, is target for the fifth.

This level of resistance you are seeing with the Harris Tories changes on a daily basis and escalates. If this bill passes as it stands, that level will escalate dramatically. More and more of the workforce will have nothing left to lose by staging struggles and protests.

The normal purpose of labour law is to ensure the smooth function of the labour market to ensure that Ontario is attractive to labour investors. This amendment will ensure that peace is difficult, if not impossible, to achieve. It sets the stage for conflict, not the resolution of conflict.

Large employers will have all the advantages with this bill. They have more money, more resources, and limiting the unions' ability to access the resources from the Ministry of Labour will tip the scales in this forum severely against them. If the labour movement cannot win

in the courts, labour will go back to the streets, where it has won before.

The unions will have to look where they can win and will force those situations. Many small employers will be caught in the squeeze. The small employers do not wish to destroy the fragile peace that exists but, unable to cope with the larger firms that exist, they will have to seek major concessions. Labour will then back these strikes at the smaller employers with great vigour because they can win those easier. You will see the destruction of small employers and small business, which is the normal mainstay of the Ontario government, Mike Harris revolting sense of common revolution.

Given a few years of this, labour could be seen like Mexico, and \$5 a day will seem great; or the whole thing will blow up, with labour united into an unstoppable force that will sweep aside everything in its way. It will either leave a new society or a wake of destruction that this country has never seen in its history.

Regardless of the outcome of that struggle, there will be definitely a struggle. The proposed legislation places labour in a situation that it will have to fight for its life. As seen with the recent OPSEU strike, even a mild, normally apolitical union will fight when threatened.

The potential of this amendment alone to erode people's standard of living should be enough to make the drafters of the amendment rethink, if not radically alter, Bill 49; it is certainly enough to make me stand in opposition to the bill as a whole. The potential for greater harm to society as a whole forces me to stand and make my stand part of public record here today.

The shortsighted may see this rush to the bottom as helping employers to become more competitive. But the more sane question is whether this makes for higher productivity, better workplace relations, increased consumer purchases or quality of life in Canada's most industrial and populous province.

Enforcement under a collective agreement: The single basis of common law is that the law applies equally. All are equal under the eyes of the law. Even the law states that there will be no discrimination based on race, colour, creed, age, sex, marital status or sexual orientation. So why are unionized workers being discriminated against by affiliation? A law that does not stand equally and apply to all should not be a law.

The proposed changes to the enforcement place respect for the law in danger. Once that respect for the law or its authority is removed, society as a whole no longer functions. Respect can only be earned, not enforced. A society can have order without respect. Unfortunately, that's a police state under essentially martial law. It only lasts a short time on the stage of the world before those that are repressed remove it.

If Ontario is the economic engine of Canada, then are not the employees the source of that power, the fuel that keeps the engine running?

Asking the unions to enforce employment standards through the collective agreement and pay for it is akin to the victim of a crime being told by the police that they can't investigate the crimes committed against them because they belong to a church, and that church, which is supported by its members, has the duty to look after its

members and the church should pay for the investigation. Unfortunately, that church also doesn't have the powers of investigation.

If you had framed the legislation in that manner, the outcry would have ripped you from power and you would have been flogged down the street by an angry public. The enforcement of the laws must remain with the government. Only the government has the resources, the legal and moral authority, as well as the neutrality — at least normally the neutrality — to ensure that all receive fair and equitable treatment under the law.

I work in a hospital. The union cannot access information on patient care, nor should it have to, unless the employer hides behind the mask of confidentiality to hide other matters. The union does not have the right to this information. An enforcement officer can enforce the act, previous to these changes, and get access to information. Will I be denied an employment enforcement officer and thus denied access to all outside intervention? Will my employer be able to hide wrongdoings because the collective agreement does not give me the right to look at certain information?

The Vice-Chair: Mr Healy, I hate to interrupt at this point, but we have exceeded almost by a minute now the 15-minute time frame. I trust that you will allow us to keep your proposal and your submission here and read it as we go through these hearing processes. I thank you very much for attending today.

1750

Mr Healy: I just wish to state one thing, that basically if your proposed changes go through, the people in Ontario who are affected by them will end up in a situation that they will have to defend themselves. Whether you give them the recourse to defend themselves within the legislation or whether they take that outside the legislation and use other means, it will hurt. I would prefer to make sure that those other means do not have to occur because there will be violence on the street —

Mr Tascona: Madam Chair, who's next?

The Vice-Chair: Thank you very much.

TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

The Vice-Chair: I would ask the representatives from the Toronto Workers' Health and Safety Legal Clinic to please come forward. Thank you for attending and welcome to our hearing process. I would ask that for the good of those remaining that you please introduce yourselves.

Mr Daniel Ublansky: My name is Dan Ublansky. I'm the director of the Toronto Workers' Health and Safety Legal Clinic. With me is my colleague, Linda Vannucci-Santini, who is a staff lawyer at the clinic. I want to thank you for the opportunity to address the committee today.

Just by way of introduction, the Toronto Workers' Health and Safety Legal Clinic is funded by the Ontario legal aid plan to provide legal and technical advice and representation to unorganized workers who face health and safety problems at work. Our activities are controlled by a board of directors elected from the community.

The clinic provides workers with information about health and safety hazards of their employment, advises them about their rights under the law and provides legal representation when that is required. In addition to individual advocacy, we undertake community education and outreach programs aimed at unorganized immigrant workers primarily and we engage in law reform activity, such as the brief we're presenting today. Our activities touch over 2,000 unorganized workers every year.

I will try to cover as much of the brief as time permits. I'll deal with part of it and my colleague will deal with other parts.

The employment standards branch, which administers the act, receives roughly one million inquiries annually; almost 20,000 formal complaints result from these inquiries. In 1994-95, over \$64 million in back wages owing was assessed against Ontario employers in respect of violations of the act. Of that \$64 million, \$47.8 million or 74% was not collected. Thirty-four per cent of the uncollected amount was due to employer refusal to pay.

These statistics point to the deplorable extent of non-compliance with the act, as well as the need for stricter enforcement. Certainly, a compelling argument could be made for the need to introduce legislation which strengthens and improves enforcement and achieves better compliance with the act.

Instead, the government has proposed a set of amendments in Bill 49 which move in the opposite direction. It is as if the government had decided to control speeding on the highways by increasing the speed limits and lowering the fines for its violations.

Bill 49 will encourage more employers to violate the act. Fewer workers will be able to file claims for moneys owed to them and the amounts they can recover will be capped by arbitrary limits. How does this meet the labour minister's stated objective of "helping the most vulnerable workers"? I'd leave that as a question.

We'll now deal with individual proposals and I'll turn that over to my colleague Linda.

Ms Linda Vannucci-Santini: I'm going to talk about the limitation periods under Bill 49. Before I start, I should say that this brief is peppered with situations concerning bad employers. We know there are good employers out there. We just don't hear about good employers. We're a legal advice service in employment law and workers call us who are angry and upset because they've been denied either their rights under health and safety law or just basic minimum standards under the Employment Standards Act. I just wanted to explain that bias right from the top. That's what we hear about day in and day out.

Again, the aspect of focusing attention on the most vulnerable workers, this bill reduces the limitation period, both for bringing claims and recovering money from two years to six months. In addition, the bill proposes to impose a maximum monetary limit of \$10,000 per employee per claim. I fail to see how this helps the most vulnerable of workers.

If we look at the area of six months to make a claim many of the workers we hear from, Ontario workers, are in marginal, insecure, low-paying jobs. They have no union protection. Ninety per cent of workers seeking to

enforce their rights to minimum entitlements under the Employment Standards Act only do so after they're no longer working for the employer who owes them money. Why? Because they think they'll be fired if they complain.

The fact is, the Employment Standards Act does not provide an adequate remedy for workers who are fired for trying to enforce their rights. A case in point: A few years ago, I represented three Spanish-speaking demolition workers — actually they worked removing asbestos — and they were discharged when they complained about unhealthy working conditions. They had refused unsafe work and they had made a video about their working conditions and they had the nerve to do that because it was either their job or their life basically.

We went before the Ontario Labour Relations Board and they found that their employer had broken health and safety laws in firing these three workers. However, what came out — why I represented them — was that they were shortchanged on overtime hours. They were paid straight time instead of time and a half and that's a very common occurrence, particularly in the hours between 44 and 48 hours worked per week. In two of the cases the employer benefited for over six months and in the third case for well over two years. The three workers didn't know their rights concerning overtime. They didn't know they were owed time and a half, and if they had known they would have been afraid to risk their future employment with the company by complaining about it to the employer or by making a report to employment standards. Of course, after their discharge, they filed claims with the employment standards branch and eventually they received the overtime pay owing them.

If their claim had arisen now, the new six-month limitation period for bringing a claim would have barred these three workers from claiming at all. It would allow that employer to get away with cheating them and probably all the other people working for him. So, in my view, reducing the limitation period for making a claim from two years to six months will probably reduce the number of eligible claims but not the number of employers who violate minimum standards. In fact, it seems to encourage violation of the law.

Another case involved a sales woman. She was actually a travelling sales woman, selling fabric three years for the same company. She was quite surprised when she found out that she had overtime rights and that her employer wasn't paying her for overtime, but she gained was afraid to complain about this and afraid to file a complaint to the employment standards branch. She also would lose her right to claim within six months of the overtime payment being due.

Concerning the amount recoverable, six months owing: if a worker manages to bring a claim within six months, the amount they can recover is reduced from two years under the current scheme to six months.

How much do workers actually stand to lose if this aspect of Bill 49 becomes law? If we look at the very common occurrence I mentioned earlier, and that is working 48 hours a week and being paid straight time instead of time and a half for the four hours between 44 and 48 hours, and the wage of those three asbestos

removal workers, they were earning \$11 an hour, they would have been entitled to \$16.50 for four hours a week. Over a six-month period for each one that would have been about \$572 and over two years, well over \$2,000.

I know the argument exists that it's not very cost-effective to have the government involved in collecting such small amounts of money. Under Bill 49, it would have been the \$572 collectible if they'd made their claim in time, and under the current law it's \$2,288. But really, this kind of attitude is demoralizing for working people who earn \$11 an hour. That \$2,288 for somebody earning \$22,000 a year, which is more or less what \$11 an hour comes to, represents 10% of their annual income. These vulnerable workers shouldn't be left to feel that the government doesn't care about them or it's not worth the government's while to help them assert their basic rights.

1800

Under Bill 49 in this case, the one worker's loss, about \$1,700, was a corresponding gain to the employer, and if you multiply that by 10, 100 or 1,000 workers, the amount becomes significant. To add insult to injury, the protection from reprisals under the current Employment Standards Act and under Bill 49, and would remain under Bill 49, is inadequate.

I outlined section 76 that prohibits employers from dismissing, disciplining or penalizing workers for trying to force their rights under the act, but it must be pointed out that this can only be enforced by way of prosecution in the provincial court.

The Ministry of Labour rarely prosecutes employers who offend section 73. Of course, a worker can lay an information before a justice of the peace and represent himself or herself before the provincial court in the prosecution of the employer, but workers don't tend to do this. Most people are reluctant to represent themselves in formal courtroom settings and they feel, and they're probably right, that they are unfamiliar with the procedures and the substantive law. So workers really seek this remedy.

A positive feature about section 73 prohibiting reprisals is that a provincial judge can order reinstatement to work or compensation in lieu of reinstatement, and that's a very important remedy. But sadly, as I said, that section is rarely resorted to.

Employment standards could have better protection against reprisals if it was more like other legislation in the provincial jurisdiction in Ontario such as the Labour Relations Act or the Environmental Protection Act, the Occupational Health and Safety Act. It's a civil tribunal setting where workers can apply for reinstatement and compensation for lost wages. Proceedings take place before a specialized tribunal and not a court; it's a more worker-friendly setting. The burden of proof is on the employer to show and the standard is the balance of probabilities that no part of the reason for the discharge, discipline or penalty was related to the worker trying to enforce their rights. Reinstatement is also a remedy under those pieces of legislation. It is a strong deterrent to employers who violate the law because there is an uplifting effect, and we've seen it in our own work when a worker is reinstated to the workplace.

Now I'll turn it over to my colleague for the other areas that we wish to outline.

Mr Ublansky: Thank you. Bill 49 proposes to require non-union employees to decide whether they wish to file an employment standards claim or take the matter to civil court. Once a claim has been filed, the worker then has two weeks to reconsider.

The stated rationale for this change is "to eliminate duplication and make better use of resources and encourage self-reliance." Presumably, these objectives are to be achieved by forcing non-union workers to undertake long, costly and complex legal actions rather than file employment standards claims.

The workers most affected by this change will be those who have already been adversely affected by the previously discussed amendments which limit the amount that can be recovered through an employment standards claim. By forcing these workers to make an immediate election between an employment standards claim and court action, the government will be denying them the opportunity to recover the minimum amounts owed to them in a more timely and less expensive manner while still pursuing any additional amounts beyond the legislated maximums.

Allowing a worker to pursue both remedies does not involve duplication since any amounts recovered in one proceeding would be offset against amounts received in the other. In addition, any issue determined in one forum would be binding on the other. In any event, if either of these matters were truly of concern to the government, the government could introduce amendments to ensure that this takes place.

So what you're left with — and the chief beneficiaries of putting the squeeze on non-unionized workers to choose between employment standards claims and legal action again are the employers who refuse to pay their workers the full amount owed to them. In all likelihood, the majority of workers, as Linda says, will file employment standards claims rather than undertake an expensive and time-consuming lawsuit, and in so doing these workers will be forgoing the additional moneys that are owed to them. Again, all this does is provide more incentive for unscrupulous employers to shortchange their employees.

With respect to the use of collection agencies to collect, again our comment on that is that the government has put forth as an article of faith that private collection agencies will do a better job than the ministry. However, since the enforcement mechanisms that are available to the private collection agency are the same as what is presently available to the ministry, there is no particular reason to expect that more money will end up in the

pockets of workers as a result of that change. Indeed, the pressure will undoubtedly be on workers to accept less than the full amount owing since the collection agency is primarily motivated by the need to make a profit. It will act in its own interest to promote settlements rather than invoke the traditional time-consuming mechanisms of seizure of assets to collect the full amount owing. In addition, Bill 49 will create the possibility that the worker who receives less than the full amount owing will have to absorb part of the collector's fee.

I presume the speakers from organized labour have addressed the provision that has, I guess, since been withdrawn with respect to negotiation of standards and collective agreements. I won't address the issues that labour has already addressed, but speaking —

The Vice-Chair: Excuse me just for a moment.

Mr Ublansky: I may not address any of those issues.

The Vice-Chair: It might help out. There are about 30 seconds left, if you would like to summarize it or continue.

Mr Ublansky: Thank you. By way of summary, I say most employers obey the law and pay their workers what is owed to them under the act. These law-abiding employers are not the cause of the problem with the act and they will not be affected by the changes that are proposed in Bill 49.

The employers that will be affected and in fact will benefit from the major changes proposed in Bill 49 are the very same unscrupulous employers that the Employment Standards Act is designed to control. Why should these employers who have flouted the law by refusing to pay their workers what is legitimately owed to them be rewarded for their inequities at the expense of the workers?

If the government is concerned about the growing volume of employment standards claims, then it should put forward a set of proposals that are directed at recalcitrant employers who refuse to comply with the law. That is what one would normally expect to see and, indeed, this government has demonstrated this kind of determination in dealing with the issue of truck safety on the highways which is, I believe, the headline in the *Toronto Star* today. We believe the same kind of aggressive approach to lawbreakers is what is needed in the Employment Standards Act.

The Vice-Chair: The time has expired, sir. I can appreciate you coming forward. Thank you.

Seeing there are no other presentations to be made today, hearings will resume tomorrow morning at 10 o'clock in this room. Thank you.

The committee adjourned at 1808.

Continued from overleaf

Toronto-Central Ontario Building and Construction Trades Council	R-1391
Mr John Cartwright	
Ms Irit Kelman	
Lumber and Building Materials Association of Ontario	R-1393
Mr Stephen Johns	
Mr Simon Dann	
Community and Legal Aid Services Programme	R-1396
Mr Barry Wadsworth	
Amalgamated Transit Union Canadian Council	R-1398
Mr Tom Parkin	
Employment and Staffing Services Association of Canada	R-1401
Mr David Stark	
Mrs Karen Mugford	
Unemployed Workers Council	R-1403
Mr John MacLennan	
Ms Valerie Packota	
Mr Terry Kelly	
Mrs Beatrice O'Byrne	
Canadian Union of Public Employees, Local 79	R-1405
Ms Anne Dubas	
Ontario Liquor Boards Employees' Union	R-1407
Ms Julia Noble	
Mr Joseph Healy	R-1410
Toronto Workers' Health and Safety Legal Clinic	R-1412
Mr Daniel Ublansky	
Ms Linda Vannucci-Santini	

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Substitutions present / Membres remplaçants présents:

- Mr John O'Toole (Durham East / -Est PC) for Mr Carroll
- Mr John L. Parker (York East / -Est PC) for Mr Maves
- Mr E.J. Douglas Rollins (Quinte PC) for Mr Murdoch

Also taking part / Autres participants et participantes:

- Mr Howard Hampton (Rainy River ND)
- Mr Peter Kormos (Welland-Thorold ND)

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Ray McLellan, research officer, Legislative Research Service

CONTENTS

Tuesday 10 September 1996

Employment Standards Improvement Act, 1996, Bill 49, Mrs Witmer /	
Loi de 1996 sur l'amélioration des normes d'emploi, projet de loi 49, M^{me} Witmer	R-1347
Canadian Federation of Independent Business	R-1347
Ms Judith Andrew	
Ms Catherine Swift	
Canadian Union of Public Employees, Ontario division	R-1350
Mr Nick Milanovic	
Mr Brian O'Keefe	
Council of Ontario Construction Associations	R-1352
Dr David Surplis	
Employment Standards Work Group	R-1355
Ms Jan Borowy	
Ms Consuelo Rubio	
North York Women Teachers' Association	R-1358
Ms Heather Garrett	
Ontario Restaurant Association	R-1360
Mr Paul Oliver	
OPSEU Members — Ministry of Labour Employee Relations Committee	R-1363
Mr Robert Rae	
Metro Toronto Clerical Workers Labour Adjustment Committee	R-1365
Ms Alice de Wolff	
Ms Maureen Hynes	
Canadian Council of Grocery Distributors	R-1368
Mr Max Roytenberg	
Ms Arlene Lannon	
Mississauga Board of Trade	R-1370
Mr Charles Coles	
Mr Norman White	
Human Resources Professionals Association of Ontario	R-1372
Mr Mike Failes	
Union of Injured Workers of Ontario Inc	R-1375
Mr Phil Biggin	
Mr Carmine Tiano	
Mr Maurice Stewart	
Union of Needletrades, Industrial and Textile Employees	R-1378
Ms Alexandra Dagg	
Ms Harwant Singh	
Ms Yin Ping He	
Automotive Parts Manufacturers' Association	R-1380
Mr Ken MacDonald	
Intercede	R-1382
Ms Fely Villasin	
Ms Coco Diaz	
Law Union of Ontario	R-1384
Mr Malcolm Davidson	
Mr Richard Blair	
Olsen International BV	R-1387
Mr Gary French	
Andra Associates Inc	R-1389
Mr John Andrachuk	

Continued overleaf

XC13
-576



R-31

R-31

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(Hansard)**

Wednesday 11 September 1996

**Journal
des débats
(Hansard)**

Mercredi 11 septembre 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Wednesday 11 September 1996

Mercredi 11 septembre 1996

*The committee met at 0903 in committee room 1.*EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): I call the meeting to order. Good morning on this, the second-last of our days of hearings on Bill 49, An Act to improve the Employment Standards Act.

WHITBY CHAMBER OF COMMERCE

The Chair: Our first presentation is ready to go, I understand, from the Whitby Chamber of Commerce. Good morning. Welcome to the committee. Just a reminder that we have 15 minutes for you to divide as you see fit between either presentation time or question-and-answer period.

Mr Marc Kealy: Thank you, Mr Chairman. Seeing a small contingent of people on this side, we'll make our statements very, very brief. My name is Marc Kealy. I'm the chairman of the government relations committee at the Whitby Chamber of Commerce. With me today is Jeff Crump, who's a director on the government relations committee and a general manager at The Office Place in Whitby.

As I said, we'll make our presentation very brief. We know you've had a long time sitting through this thing and, surprise, surprise, I think we support what you're doing, not because we're philosophically aligned or anything like that, but because we think this is the right legislation at this time. Let me just begin.

When the Minister of Labour, the Honourable Elizabeth Witmer, rose in the Legislature to announce changes to the Employment Standards Act, she suggested that the intent and substance of the amendments to the act were what she quoted as "housekeeping." In our view, we couldn't disagree more. In fact, we were quite surprised by her choice of word. No philosophical argument or rhetoric about the change in the nature of work or the workplace in this province and in fact in the world could be stated strongly enough. In fact, in our view the changes being proposed to the Employment Standards Act are strong enough to warrant the attention of both employers and employees at a time when the status quo is no longer acceptable. This is a principle in the Common Sense Revolution, which I'm sure many of you

here know, and with infinitely more credibility than just housekeeping.

Bill 49, in our opinion, addresses the ever-changing nature of work. We're particularly pleased with the major changes highlighted in this legislation. To suggest that the current system of settling claims under the act is a nightmare is a massive understatement. Our chamber's government relations committee has been very aware of the changes to the work environment for quite some time. We're pleased that this piece of legislation has made it clear that it intends to meet several objectives. Many of you are very aware of those objectives, so I'll just briefly glean them: a more efficient and effective use of Ministry of Labour resources in the administration of the act; the promotion of more localized settlements between employers and employees, meaning a greater need for flexibility; and of course an improvement in the language of the act, making it more user-friendly.

From the Whitby Chamber of Commerce perspective, these amendments hit at the very heart of the issue in the workplace, and that is an employer's ability to pay.

Coincidental to the amendments to Bill 49, we are pleased that the government moved swiftly to amend Bill 40 through the introduction and subsequent passage of Bill 7. At that time, the legislation being presented addressed a concern over an employer's ability to pay. We strongly believe this principle should and must be reflected in Bill 49. For example, if an employer in a unionized workplace has cash flow problems due to the struggles of his work environment, a more suitable arrangement other than a collective agreement or a local agreement about overtime payments or premiums might be better resolved in a greater severance package to an employee, if that is the case, or another benefit in lieu of those payments. This may be a thorn in the side for some unions, but the basic premise we wish to argue today is that an employer's ability to pay must not be overlooked in the larger picture of creating a more favourable workplace and more opportunities for expanding business, which ultimately increases employment and creates wealth.

The bottom line for us is to keep business in business. While there may be vulnerable employees, and we all know stories, there are also vulnerable employers. So let's create an environment where partnership between employers and employees is the order of the day, rather than rigid legislation that pits one against the other.

Mr Jeff Crump: The Whitby Chamber of Commerce is very supportive of those provisions of Bill 49 which eliminate duplicate claims and limit recovery of money by a claimant to a six-month period. Employers are

increasingly faced with defending claims of the same nature or for the same remedy in multiple forums.

The problem is not restricted to employment standards complaints; it also spans a variety of employment-related statutes. However, strictly dealing with the Employment Standards Act, non-unionized employees are able to have employment standards disputes dealt with by the court in wrongful dismissal actions, as well as the employment standards branch.

Unionized employees are able to file grievances under a collective agreement, if applicable, to be dealt with in the grievance and arbitration process of that collective agreement, and may also file complaints with the employment standards branch. Employers are often left vulnerable to defending the same dispute in multiple forums and must bear the associated costs.

We believe these resources would be more efficiently utilized in one single forum. Given these facts, the chamber supports provisions of Bill 49 which would eliminate the ability to pursue duplicate claims in multiple forums.

The Whitby Chamber of Commerce is also very supportive of the proposed provisions of Bill 49 which would limit the entitlement to recover money under the act to six months instead of the current two years. The proposed provision quite properly places an onus on employees to make complaints in a timely manner. Delays in making complaints often create an unfairness to the employer in providing a defence. The longer the process, the more difficult will be the investigation and, consequently, the greater the costs.

Further, we agree the increased appeal period provides a more reasonable time in which to (1) allow the parties to negotiate a settlement in lieu of an appeal; (2) more fully consider the merits of filing an appeal; and (3) make the necessary payment of the amount of the order and administration costs to the director in order to apply for the appeal. In many cases, the current 15-day period in which to make the payment causes a hardship to employers.

Mr Kealy: Flexibility is the key word to this new legislation. We in business and those who work are witness to some of the most significant changes in employment and in the nature of work. So this is not merely housekeeping; this is focusing on the future. We in business want to create a better environment, one where quality and pride in the work or service we provide is one of the primary goals. Our greatest asset is our creativity and those who help us achieve our goals; namely, our workforce.

The current environment in the global workplace demands more than a philosophical difference of opinion between employer and employee. We find ourselves as citizens of the world in a vastly complicated and ever-changing world which demands partnership and creative understanding from all sides to resolve disputes. There will always be disputes among differing peoples; it's part of life. But we must deal with disputes in a manner which is equitable to both sides and based on the principles of fairness and common sense.

We support your efforts, Mr Chairman, and those of your committee to streamline the act. We encourage employers and employees everywhere to work in partner-

ship. We applaud the amendments in the bill which bring clarification, flexibility and, above all, an ability to tie pay to the forefront as we all strive to meet the challenges of the next millennium. Striving to make Ontario open for business indeed makes good common sense. Thank you very much.

0910

The Chair: Thank you, gentlemen. That leaves us now with two and half minutes per caucus for questioning. Always, we'll commence with the official opposition.

Mr Jean-Marc Lalonde (Prescott and Russell): Thank you for your presentation. I'm just going to ask you a question. At the present time, the actual ESA regulates the number of hours that are permitted to be known as regular working hours. It is at 44. Knowing the problems that small businesses have to meet both ends at the present time, don't you think it should be regulated to at least 48 hours, and also unless it is at the request of the employee? Because at times the employees are asking if they could put in more time at the regular rate because their wives have lost their jobs and they have to meet the payment. Don't you think there should be a cap, though, at 48 hours before you start getting paid the overtime?

Mr Kealy: Mr Lalonde, I think the important point is again, it goes back to the whole issue of an ability to pay. I agree with your premise. If there were a cap, I think that could be something in a local agreement that could be worked out. But in our view, it's very important that you take account of the bottom line in an employer's situation. If an employer said, "We'll cap it at 48 hours, but he can't pay you for 48 hours, what do we do?"

Mr Lalonde: You can pay. If he works 40 hours, he gets paid 40 hours. It's just the fact, with opening a Sunday shopping now, some of the employees are forced to work 60, 65 and 70 hours a week. This is a killer and it also affects the quality of life in the family.

Mr Kealy: I agree with you. In my business, I deal a lot with contract services. We paid a lot of our contract services on an hourly basis. At the end of the day, we're looking at this and we're thinking: "Oh, my God, we're paying these people 60 or 70 hours a week. It's driving us into bankruptcy." So we had to change the focus, and the focus was that if we're going to pay you on a contract, fee-for-service, it'll be this much per week or this much per month, which makes a heck of a lot more common sense for us, because if we're paying them on an hourly rate, the cost to the employer is far too high.

Mr Lalonde: But this bill will not eliminate the minimum salary. What we saw yesterday, people getting paid at \$5.40 an hour, I just hope that this won't continue.

Mr Kealy: I think those are isolated cases in a lot of senses, Mr Lalonde. Mr Crump runs a very successful business with 40 or 50 employees, and I don't think he has those kinds of disputes. More and more we're hearing that the media will represent the case of five or 10 people when 5,000 or 10,000 people are not really affected by this.

Mr David Christopherson (Hamilton Centre): Thank you very much for your presentation this morning. I appreciate that you start by saying you're pleased to be here and then move to say that you're pleased that the government moved so quickly with Bill 7. Just for the

record, so you know, there are those of us who aren't so pleased that they chose to ram through Bill 7 without a single day of public hearings and left a very bad taste in the mouth of an awful lot of people who have a right to be heard, and with the fact that we, quite frankly, had to rag the government kicking and screaming into the public arena to debate Bill 49, which they've already started to change as a result of our hearings. Just so we understand where we all start from.

I was also pleased to hear you sort of take a rather offy position referencing yourselves and all of us as citizens of the world. I think that's a good approach, because many of the people who have come forward from Ontario have been extremely concerned that the agenda of this government, particularly its agenda as it relates to working people, is one that has this province facing to the bottom in terms of standards. Rather than trying to make things better, especially for those most vulnerable, we seem to be looking for the lowest common denominator in terms of environment, work standards, health and safety and other things, and that's caused an awful lot of concern.

I'd like to ask you a question, since you do focus on the fact that there are both vulnerable employees and vulnerable employers. The Employment Standards Act is the only real bill of rights that a working person has if they don't have a union. One of the things you don't mention but that is in Bill 49 is a minimum threshold that says from now on, if the government pegs it at, say, 200 bucks, if somebody's owed \$50 or \$75 from one of those unscrupulous employers, of which I'm sure you don't have very many members, but they exist —

Mr Kealy: They do exist.

920

Mr Christopherson: They exist, and that's why the law is there to protect people from them. If they put it at 200, then especially minimum wage employees who perhaps don't have English as their first language are afraid to file a complaint for their job, but even if they did, the Ministry of Labour wouldn't accept their complaint if it was for \$50 or \$75. They can't afford to hire a lawyer, they can't afford to take time off to go to Small Claims Court, and in effect, they're beat for that money. I just wonder how you see that in your overall view that this is a fair and good piece of legislation.

Mr Kealy: I think your premise is right. I just want to reface my remarks by saying that we spoke to the committee when your government was in power on Bill 49, and there were some instances in the legislation where we agreed with your direction, and I think philosophically it doesn't necessarily follow that because we're a business association, therefore we're opposed to employees or unions, if that's the case.

But in terms of this, our understanding of the amendments to Bill 49 is that it will make it actually easier for a dispute to be resolved. You're actually given the choice now as an affected employee or an affected employer to resolve your dispute. I guess from my perspective of the Whitby Chamber of Commerce, we see it as a localized agreement in a lot of ways.

Mr Christopherson: Too bad we didn't have longer, but that's fine.

Mr John O'Toole (Durham East): I'd like to thank you, Marc and Jeff, for coming all the way from Durham this morning.

Mr Kealy: It's always good to see you, Mr O'Toole. You're one of the best MPPs at Queen's Park.

Mr O'Toole: I know. I'm working very, very hard here.

Mr Christopherson: You haven't been watching the hearings.

Mr O'Toole: In response to Mr Christopherson's comment, this government was elected to repeal Bill 40 and that's exactly what we did. There were public hearings all during the process and the people clearly stated that on June 8, just over a year ago.

I want to draw to your attention a couple of things in your report. I think it's the first time I've seen it said so succinctly. We all know about vulnerable employees, but what about vulnerable employers? I like that distinction. There are two groups in this particular group and we're looking for balance in all of the legislation we've brought forward.

Are you familiar with the Carr-Gordon report, issued by Frank Sheehan of the Red Tape Review Commission, which cited the Ministry of Labour as being one of the barriers to growth and jobs creation?

Mr Kealy: Actually we've gleaned it, yes.

Mr O'Toole: It's a good report. Yesterday we had a very interesting presentation from the Employment Standards Work Group, and I thank them for bringing to our attention some really relevant statistics. In the last several years the number of claims have gone up some 300%, the amounts of the claims have gone from \$800 to \$2,400 or \$2,800, and yet the collections have actually gone down. Don't you think that those three statistics indicate that the present system is broken, claims going up, amounts going up and the actual settlements going down?

Mr Crump: I think it certainly shows that. It also shows that there has been a great deal of responsibility and perhaps onus put on employers, more specifically of large companies, to realize the needs of their employees, to act on them and to be responsible to the employees with management and working more in a team environment than they have in the past.

Speaking specifically, my personal work experience is that that's exactly what's happening, and I think you'll see that continue to grow. In fact our corporation and I know past companies I've worked for have done nothing more than increase the human relations side of the business.

Mr Kealy: Yes, it's certainly grown.

Mr O'Toole: We were in Hamilton and they were using the theme there, "Our product is steel and our strength is people," and I think that says a lot about the industry.

Mr Crump: We're finding that's a common theme certainly in the retail environment and in the general workplace. The common theme now is certainly that the strength of most companies is the people working for them, and I think maybe it's just taking a little bit of time for the working environment to realize that.

Mr Kealy: If I could too, Mr O'Toole, just to —

The Chair: Very quickly.

Mr Kealy: Just very briefly. We made the point in our presentation that there's been a change in the nature of work. People are more transient, employees are more transient. There's a lack of loyalty. We're screaming for this. If somebody were to come in to us as an employee, in a lot of ways we may invest in them but we may not have them around for too long. I think in a lot of ways that's another issue we're trying to bridge in terms of partnerships between employer and employee.

The Chair: Thank you very much and sorry, but in the interests of moving along to the next group I have to cut you off.

Mr Kealy: Hey, no, this was great.

The Chair: We appreciate your taking the time to make a presentation before us.

Mr Kealy: Thank you for having us. We'll see you soon. Good luck.

DOWNTOWN LEGAL SERVICES

The Chair: That leads us now to our second presentation of the morning, Downtown Legal Services. Good morning and welcome to the committee.

Ms Anita Bapooji: My name is Anita Bapooji. I'm an executive member at Downtown Legal Services.

Ms Catherine Glaister: I'm Catherine Glaister, a third-year law student and a case worker at Downtown Legal Services.

We have what we think is a fairly brief presentation, so we'll go through that and we'd welcome any questions, if that's appropriate.

We'd like to start by explaining a little bit about what Downtown Legal Services is and why we're here. Downtown Legal Services is a poverty law clinic at the University of Toronto faculty of law and we represent clients in many different areas of law, including unemployment insurance, social assistance, employment standards and criminal matters. Case workers at the clinic are law students at the school, and we have a full-time review counsel lawyer for all non-criminal matters.

As a poverty legal clinic, our clients include social assistance recipients, people living on pensions, unemployed people and the working poor. As mentioned, we provide legal advice and representation for people making claims under the Employment Standards Act. Our clients are unorganized workers who have no other representation and we believe that changes to the Employment Standards Act will therefore affect the rights of our clients.

Downtown Legal Services is one of the few clinics in the city that will provide legal advice and sometimes representation on wrongful dismissal claims. Because law students do not have standing in the Ontario Court of Justice (General Division), any wrongful dismissal claim that we assist with must be made in the Small Claims Court of Ontario where the maximum claim is \$6,000.

Therefore, when a client is owed money by an employer, we may advise proceeding either by means of a small claims action or by pursuing a claim under the Employment Standards Act. The common law provides for a longer notice period than does the act and may also award punitive damages to the former employee, but

proceeding to court is not appropriate in many circumstances, such as when employees are not claiming to have been wrongfully dismissed but are simply owed back wages that they haven't been paid, overtime, vacation pay and so on. In addition, the court procedure is extremely lengthy and puts a strain on our resources as a legal clinic as well.

With respect to the submissions we're making this morning, we're making them with respect only to a few select issues that we feel will be most important to our clients. Therefore, our comments will be restricted to the impact of some of the proposed changes on unorganized workers and low-income people.

As we all know, as presently written, the Employment Standards Act provides a basic minimum for workers in the province. Our clients, as workers in Ontario, are entitled to receive a basic minimum wage, overtime pay for every hour worked in excess of 44 hours and 4% vacation pay.

The basic problem with the act at present is that it is complaint-driven and that employees are at risk of losing their jobs if they attempt to enforce their rights under the act. Additionally, the enforcement mechanism is very slow. When employers do not meet the requirement under the act, employees do not have a realistic chance of enforcing their rights and keeping their jobs, and there are no changes in Bill 49 that we feel address this major problem. However, it is significant that the act applies to most workers in the province and that it provides a mechanism to enforce workers' rights.

We'd like to turn to just a few of the proposed changes in Bill 49.

Limitation periods for filing a claim: The act presently allows a claim to be made for money owing dating back two years from the date of filing the claim. Claims are not made only for one-shot events such as termination but also for long-term violations of the act. Therefore, the change from two years to six months, as proposed in Bill 49, is not merely a procedural or a housekeeping change but a substantive change. A two-year limitation period does not prejudice employers because they are mandated to keep employment records for much longer than that.

Many clients come to Downtown Legal Services with claims that are more than six months old, and under Bill 49 they would have no redress under the act. Their reasons for delay are varied, such things as trying to find a new job after they've been terminated, attempting to get unemployment insurance and so on. In addition, we've found that many workers are not adequately informed of their rights. If the ministry is concerned about providing Ontarians with basic rights as workers, then the ministry must ensure that the act is acceptable to them. Reducing the limitation period from two years to six months is a huge step backwards.

Limitation periods for appealing an order: There is presently a 15-day limitation period for an employer to submit notice of appeal of an order issued by an employment standards officer and, correspondingly, an employee has a 15-day limitation period to appeal an order issued or the failure of an order to be issued. Bill 49 proposes extending this limitation period to 45 days from the 15. This would result in an additional one-month delay for

the worker, who would have been owed her wages for months already by the time an order is issued. We feel this is an unnecessary change to the legislation, as the purpose of the act is to provide for speedy enforcement of rights.

Minimum amount of claim: As we know, there's currently no minimum amount for a claim filed under the act, and Bill 49 proposes a minimum which is not specified yet. The establishment of a minimum claim amount would mean that a worker would have no way to claim the money owing to her up to that minimum amount. Not only could employers steal this minimum from their workers, but they could do so every six months. Students who earn a lower minimum wage than other workers could be particularly hurt by this provision. The only way to receive money up to this minimum would be by going to court, which would clearly be impractical both for the worker and for us as a legal clinic to represent people on those kinds of matters.

Maximum amount of claim: The act presently has no upper limit on the amount of a claim, and Bill 49 proposes the imposition of a maximum amount of \$10,000. What recourse does a worker have if she's owed more than this amount? From our perspective as a poverty legal clinic, she cannot obtain the \$10,000 through the Ministry of Labour and then pursue the rest civilly; therefore, if she wishes to make a claim for an amount in excess of \$10,000, she must pursue the claim in court, in General Division. This is again because Downtown Legal Services is an only represent clients in Small Claims Court where the maximum claim is \$6,000. The Ontario legal aid plan does not give legal aid certificates for wrongful dismissal or this type of issue. Therefore, a low-income client who has a claim in excess of \$10,000 will have no alternative but to forgo the excess amount.

Workers' options for enforcing rights under the act: Bill 49 proposes that a worker be barred from making any civil claim against an employer once the worker has filed an employment standards claim, unless the claim is withdrawn within two weeks of being filed.

This two-week period could be read as an opportunity for the worker to obtain legal advice to decide which route to pursue the claim. If so, two weeks is inadequate. Downtown Legal Services is one of the community legal clinics where a worker would go to obtain this kind of advice. We generally book appointments at least one month ahead and additionally, as a student clinic, we're closed for approximately six weeks at a time twice a year during the examination periods. Therefore, we feel that two weeks is not long enough for a worker to make a decision about her options, but it may not even be enough time to find out what her options are. The proposed amendment is also overinclusive, as it bars workers from making any kind of claim under the act if any redress is sought in a civil court, and this undermines the procedural purpose of the act as well.

We'll finish up our brief comments with our conclusion that Downtown Legal Services is strongly opposed to the proposed changes under the Employment Standards Act that we've discussed. We believe that our clients who file employment standards claims are at risk of receiving less than their true entitlements and that they

may have to wait even longer for their money once an order has been issued. Furthermore, we believe that these changes may make it more difficult to enforce workers' rights and that our clients will be less likely or less able to make a claim for what they're owed.

Workers in Ontario should be able to reasonably expect that their rights in the workplace will be enforced. Unorganized workers often have no representation unless they can afford to hire a lawyer or unless they can afford to proceed by way of civil suit. Workers in Ontario who cannot afford to hire a lawyer should not be further disadvantaged by these changes to the act.

0930

Because Downtown Legal Services deals with such a wide range of legal issues, we are able to see how they interact. A worker who's not paid wages may have difficulty paying the rent or may have to turn to social assistance, for example. This could result in an increase in evictions, an increase in shelter costs, an increase in court costs and an increase in welfare costs. The social costs of unpaid wages are far greater than the dollar value of unpaid wages; therefore we feel it's extremely important that employers be deterred from violating the act in the first place.

The proposed changes will weaken the deterrence value of the Employment Standards Act, and Downtown Legal Services opposes such changes, which would allow unscrupulous employers to declare open season on workers.

Mr Christopherson: Thank you very much for your presentation. It's probably safe to say — I haven't done the calculation — that the overwhelming majority of lawyers and those who are close to being lawyers have come before this committee across Ontario opposed to this legislation and have made very effective cases. You've joined that long, hopefully influential line. I particularly liked your line that said "...social costs of unpaid wages are far greater than the dollar value of unpaid wages." I haven't heard it put so succinctly and I think it's a case that needs to be made over and over.

My comment or question to you, in the time that's allowed, would be to draw attention to your statement on the third page, "The real effect of a minimum claim amount is increased when seen in conjunction with the proposed change to the six-month limitation period." You need to know that this government has still not admitted, after all the public hearings and all the submissions, that those two items of Bill 49 are taking away rights of workers. They just will not admit it. Could you expand a little on why you believe that's the case?

Ms Glaister: How we believe that it would take away the rights of workers?

Mr Christopherson: That it diminishes rights that workers currently have in the Employment Standards Act.

Ms Glaister: As it currently stands, the Employment Standards Act is a basic floor for workers in the province. To start with, if you establish a minimum claim amount, there's simply no recourse for workers to claim money that they're owed.

If, for example, the minimum claim amount were \$100, if workers work for one day and they're not paid for that day, they may simply have no recourse. You can't go to

Small Claims Court, effectively, for an amount under \$100 when the filing fee for Small Claims Court is currently, I think, \$60 or \$75, and we believe that the act is there to enforce workers' rights. If workers have no recourse, then they have no right to the money they've earned. The six-month limitation period means this can happen every six months, time and time again. We feel it's fairly obvious that workers' rights will be curtailed by the proposed changes.

Mr Christopherson: I hope they challenge you on it. They won't, because they know they're wrong, but I wish they would, because I'd like to see you wipe the floor with them. Thanks.

Mr E.J. Douglas Rollins (Quinte): Thanks for the presentation. I too am interested in the six months and the two years, because I sit here with a little bit of amazement to think that you object to moving the two-year period back to six months to hurry up the expedition of making that claim and making the thing happen a little bit quicker for the person who's objecting, and you turn right around within two or three breaths and tell me that extending it from 15 to 45 days is the wrong thing. Is it like the windshield wiper? Are you wrong on one side and right on the other, or which way? I don't think you can have it both ways. If we want to make this system work better, we've got to shorten that period of time, yet you object to the opposite way. I'd just like to point out to you, as a person sitting here and listening, that I think you should be able to say it's either one way or the other. You're trying to tell us that it's both ways. That's my comment on it.

Ms Glaister: Our objection to the change from two years to six months is that the proposal is that you can only go back six months from the date of the claim to claim wages that you're owed. If you've been working in a job for five years and you've been paid \$5 an hour, you're out a lot of money. As it stands now, you can only go back two years from the date of the claim and claim money for those past two years, and that's only if you file your claim the moment you're terminated. Being able to go back only six months means that you're only able to claim a quarter of that amount.

Mr Pat Hoy (Essex-Kent): I too agree that the legal opinion of this bill is unanimous in its opposition as we go through these hearings.

I'd like to ask you a question, though, that is maybe cause and effect a little bit. Through your legal services, do you have any knowledge of evictions either going up or down at the current time in your service area?

Ms Bapooji: I can say they've increased. We get a lot of calls. We also do a lot of referrals at Downtown Legal Services. The tough thing is, we get calls at the last minute from a number of people who have been evicted and not known about it, and those numbers have increased. The problem also is that our ability to assist those people has been frustrated just because of the demand for our services. While we've seen an increase in evictions, our ability to assist those people has also decreased or at least has been challenged. We're referring a lot of people to other legal clinics in the city. It's been difficult, I know, for these people. But I would say we have seen a pronounced increase in evictions and eviction

proceedings. A lot of times we're acting last minute, going into court to try and avoid an eviction at the last minute, so we have seen an increase.

Mr Hoy: In your opinion, the bill could make that situation worse, that evictions would potentially go up.

Ms Bapooji: Yes. As Catherine pointed out, I think there's a correlation between how much workers earn and their ability to receive their wages and then in turn their ability to pay their rent and avoid being enrolled on welfare. I think that's a correlation which needs to be pointed out. The effect of these changes is not so limited to an employment sphere and employment actions; it actually goes broader, more social assistance matters, landlord-tenant matters etc and also potentially criminal matters. If people aren't being paid, that can have an adverse effect.

The Chair: Thank you both for taking the time to come and make a presentation before us this morning.

OSHAWA-CLARINGTON CHAMBER OF COMMERCE

The Chair: That leads us now to the Oshawa-Clarington Chamber of Commerce as our next presentation. Good morning. Welcome to the committee.

Mr Peter Mitchell: Good morning, ladies and gentlemen. My name is Peter Mitchell. I'm executive director of the Oshawa-Clarington Chamber of Commerce. The Oshawa-Clarington Chamber of Commerce is the largest business organization in the region of Durham and represents over 800 members. Our membership constituents include businesses and organizations ranging in size from one to three people to large organizations such as General Motors, which employs many thousands of individuals. We greatly appreciate the opportunity to present our views on this important matter and hope that in some small way our comments will add to the discussion and serve to improve everyone's understanding of the issues at hand.

No system, procedure, methodology or for that matter ideology is perfect. For this reason we all try, in our daily endeavours, to improve the quality and efficiency with which we conduct our affairs, be they personal, business or political. The call to analyse and improve this piece of legislation is very probably long overdue, and if one considers that our organization represents businesses employing in excess of 25,000 people, the outcome of this analysis will have a direct bearing on the lives of many of our members and the individuals who work with them and for them.

The government of the day is to be applauded for its businesslike approach to legislative reform in this area. A two-stage process with a primary emphasis on administrative issues is both practical and desirable. A solid working platform for further analysis and improvement is critically important, and we believe that the stage one amendments will permit this to occur.

Relative to stage one of this process, we agree with the government that the three most important elements of administrative efficiency in this instance are language and the need to ensure that the bill speaks to the resolution process in a manner that is easily understood by all the

parties involved; expediency both in terms of resolving employees' claims and creating an environment that supports the employee's obligation to mitigate employment, salary and wage-related damages; cost effectiveness relative to the taxpayers' demand that the system actually work and that his or her investment in that system is not wasted.

1940

We believe that Bill 49 will support these objectives while at the same time protecting and enhancing the minimum employment standards of our workers.

The Oshawa-Clarington Chamber of Commerce supports the either/or proposals which would permit an employee to make a choice of pursuing a claim through the courts or through the ministry. There is little doubt, we believe, that the majority of claims management activity will be conducted through the ministry. The elimination, in most cases, of the multiple-option provision is both practical and desirable in that employees and employers can avoid unnecessary costs and delays in arriving at a settlement of the issue.

Further, we firmly believe that any proposal that supports complaint resolution through the mutual agreement of the parties involved in the dispute will expedite the process. The cost saving that could be realized as a result of the implementation of this proposal could be significant and would inure to the benefit of the employer and the employee.

The proposed alterations to the claim notification period are both pragmatic and desirable from this organization's point of view. As a practical matter, an employee has a primary obligation to himself or herself to seek advice as required to make a decision as to a course of action appropriate under the circumstances and get on with it.

From the employer's and employee's point of view, a six-month claim notification period instead of the current two-year framework will alleviate a great deal of uncertainty and allow both sides of the issue to deal with matters that are still fresh in their minds.

One area of concern we feel should be addressed concurrently with the changes in limitation periods is the amount of time given over to employment standards officers to make decisions regarding the issuing or non-issuing of orders. Retaining the two-year time frame for his important function is impractical, and we would respectfully suggest that a nine-month to one-year time limit be adopted.

We agree with the proposed extension of the appeals period on orders from 15 to 45 days. Simple logistics come into play here, and it is entirely conceivable that an elevated level of claims resolution will actually occur during the increased appeals period.

The proposals speak to a maximum claim amount of \$10,000, with claims in excess of that amount being dealt with by the courts. As previously noted, we support the resolution of claims by ESOs prior to a full investigation. This process saves time and money and should result in an expeditious settlement of the issues. The \$10,000 limit is reasonable. Claims in excess of that amount usually involve a lengthy examination and litigation process and probably belong in the realm of the courts.

We respectfully recommend that some consideration be given to a minimum claim amount to avoid nuisance claims. We would suggest \$250 or an amount perhaps equivalent to one week's minimum wage.

This chamber strongly supports the proposal to contract out collections. Second only to the federal and provincial revenue ministries, the private sector collection industry has the best resources and the expertise to facilitate collections of amounts so ordered. ESOs are dedicated professionals whose primary function is to facilitate solutions to the broader issues that arise between employers and employees. They should be allowed to remain focused on this. Outsourcing this function and giving collection agencies some flexible guidelines within which they can negotiate settlements makes sense and will result in more claims being settled at an earlier stage in the process.

The Oshawa-Clarington Chamber of Commerce supports the Ontario Chamber of Commerce initiatives which speak to the provisions of Bill 49 allowing for a greater right or benefit assessment as a package to the second stage of this process. The Ontario chamber is correct in its belief that allowing for a greater right or benefit as a package is a reasonable and fundamentally sound component of allowing workplace parties the freedom to negotiate and mutually agree to arrangements which, if viewed separately, would not be in compliance with the act.

The proposed amendments will give benefits to workplace parties who wish to negotiate standards that, when taken as a package, provide greater rights or benefits than those spoken to in the amended Employment Standards Act.

The proposed bill includes a number of additional recommendations which are necessary to improve the processes by which information is obtained, definitions are refined and uncertainty is reduced. We support these reasonable initiatives.

The Oshawa-Clarington Chamber of Commerce supports this significant undertaking on the government's part and would offer that it is reasonably well-thought-out and promotes reliance on processes that already exist in the workplace. Additionally Bill 49, when passed into law, will make better use of the very finite resources available to the staff at the ministry departments responsible for managing this important piece of legislation.

We thank you for the opportunity to participate in this very important endeavour.

Mr Jerry J. Ouellette (Oshawa): Thank you very much for your presentation. We regularly hear about what has been classified as a race to the bottom. How many members of your organization have actually moved to other locations? Alabama is the one that's used. How many have moved to Alabama?

Mr Mitchell: None that I'm aware of.

Mr Ouellette: How many do you expect, when we hit this so-called bottom, as we're being classified, to attract or bring in directly from Alabama because of it?

Mr Mitchell: I think there are certain initiatives taking place in the greater Toronto area, for example, that would see a marketing authority being established that in fact will bring businesses from US centres into the greater

Toronto area. I don't see that as hitting the bottom. I see that as aiming for the top.

Mr Ouellette: So then would you classify this as actually a race to reality, as opposed to a race to the bottom?

Mr Mitchell: I think any race to the top is probably where reality is located.

Mr Ouellette: I think my colleague Mr O'Toole has a couple of questions.

Mr O'Toole: I just want to ask you a question, Peter, thank you very much. The \$250 minimum amount — we've heard from a number of poverty and coalition groups and I'm sympathetic to their concerns that whatever an employee has earned, an employee is entitled to. We're looking to be punitive with the bad employers. What kind of response do you have to that kind of an impression?

Mr Mitchell: I think a minimum has to be established, but I also think that common sense comes into play here. I think someone at the ministry, whether it be the ESO or some other individual working at the ministry, has to have the ultimate decision-making power to decide whether a claim is frivolous or not. But I think, if it is in writing that a \$250 limit, or whatever number is eventually chosen, I think it in fact will lead to a lot of people not making frivolous claims.

The Chair: Thank you, Mr O'Toole. Moving to the official opposition.

Mr Hoy: Good morning. It's not a criticism of your brief at all, but I was surprised that the government didn't ask you whether you weren't acting a little bit like a windshield wiper. You like the reduction from two years to six months, but you favour going from 15 days to 45. So the same question was brought up a moment ago. I thought the government would have asked you the same line of questioning.

I take note of your \$250 suggestion. It's quite true that we've had many presentations saying that there should be no minimum, but I appreciate the fact that you've given this some thought as to co-relating a minimum-wage earner and a full workweek. However, when you start drawing lines, people start falling through cracks. I think our responsibility here is to make sure that people don't fall through those cracks. But I do appreciate your thoughtfulness in that regard.

Mr Mitchell: Well, Mr Hoy, I think it's absolutely everyone's responsibility to ensure that people don't fall through the cracks, but I think some guidelines have to be set. They have to be reasonable guidelines, but there has to be a mechanism that ensures that the human side of this is not ignored.

Mr Christopherson: It's interesting that you quite effusively say you greatly appreciate the opportunity to present your views on this important matter and hope your comments will add to the discussion and serve to improve everyone's understanding.

I agree with that. I guess I wanted to ask you, do you think the government was wrong in their initial position of trying to prevent public hearings and ram this through by the end of last June?

Mr Mitchell: No, I think everyone who is involved in this process is involved in a learning process too and I

think public opinion is obviously very important and I think it's led towards what we see here today. I don't have a problem with that, no.

Mr Christopherson: So you would agree the government was wrong to initially say they weren't going to hold public hearings?

Mr Mitchell: Well, you know, Mr Christopherson, I think at the end of the day all that matters is that we are in fact sitting here. I would suggest there are probably examples in any government in the past 100 years that their public consultation record has not been fabulous, but I think we all improve.

Mr Christopherson: You make the statement about nuisance claims. We've heard an awful lot of people talk about situations where a relatively small amount — particularly compared to those with very high incomes — perhaps \$100, would not have any recourse to get back money that they're owed. You make the case that you'd like to see somebody have the ability to decide, but one could argue that was the whole purpose of having the law there without a minimum before, that an ESO would come in and make a determination or whether or not there was a legitimate claim. As the law is written now, proposed to be enacted, there will be no opportunity for someone who is owed \$100, who really can't afford to take a day off work, can't afford to hire a lawyer, and if English is not their first language, couldn't even if they had the time, go in and make decent representation for themselves, who quite frankly will just be out that money. I put that in the context of this is an unscrupulous type employer, not the type that I'm sure you would want to be associated with, but they exist. What about that employee? What happens to their right as a result of this minimum threshold?

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Mr Mitchell: As I previously stated, I think it's incumbent upon all of us to ensure that people like that don't fall through the cracks, and I would also suggest that at the end of the day there will be some mechanism in place. I'm not here to tell you what that mechanism will be, but I don't think people will be allowed to fall through the cracks.

Mr Christopherson: I'm sorry. With respect, all the presentations from people who represent workers, especially unorganized workers, in that circumstance, have pointed out — a lot of them are lawyers themselves, who understand these things better than I — make the case that Bill 49 will leave someone in the situation I have described, just out in the cold with no recourse. They're just beat for that money.

Mr Mitchell: I think we can all think of anecdotal situations that might relate to that, but I don't think they're the governing issue. I think the whole point behind these hearings is that the government is listening has proven that it can listen and that at the end of the day people will not be allowed to fall through the cracks.

Mr Christopherson: I would suggest to you that all the evidence we've heard so far points to quite the opposite. We'll find out whether they're listening or Friday when we see the government's amendments, but I just want to point out to you that the claim that some how a minimum threshold enhances this bill — you want

and made the case that Bill 49 enhances rights — even if it's questionable whether someone falls through the cracks, I think it's a bit of an exaggeration to claim that this somehow enhances the rights of the most vulnerable workers.

Mr Mitchell: I think too that it's important for the sake of efficiency that some minimums be set, just to keep those nuisance claims away. They're costly, they're expensive, they tend not to be dealt with expediently, and I think that detracts from the value of the system overall.

Mr Christopherson: I worry that —

The Chair: I'm sorry, Mr Christopherson, but we're over time there now.

Thank you for your question, and thank you very much for taking the time to come and make a presentation before us here today.

Mr Mitchell: It's my pleasure. Thank you very much.

METRO TORONTO CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

The Chair: Which leads us to our next presentation, the Southeast Asian Legal Clinic. Good morning. Welcome to the committee again. It's good to see you. Again, we have 15 minutes for you to divide as you see fit.

Ms Avvy Go: My name is Avvy Go, and the correct name of our clinic should be Metro Toronto Chinese and Southeast Asian Legal Clinic. We were established in 1987, and since then we have dealt with over 20,000 people who live in the Metro Toronto area, low-income people from the Chinese, Vietnamese, Cambodian, Laotian communities, so our clientele are people who are non-English-speaking. Many of them are new immigrants but also many long-time residents and citizens of this country.

Because of the clients we attract and we serve, we see a lot of people who are working in low-income, manufacturing, service industries, many garment factory workers, restaurant workers, people working as domestics, blue-collar kinds of jobs, and from our experience, these people, usually because of the language problem and the lack of familiarity with the system, very often don't know what their rights are under various laws, including employment standards. Even when they do, many of them are unable to enforce their rights on their own because of the various barriers they face and because of the lack of power they have vis-à-vis the other party, and in this case it will be the employer. So a lot of times the Ministry of Labour, the employment standards branch in particular, is the only way, the only body that can really assist these workers in order to get the money they have already earned.

The problem we have seen with the ministry in the past is the lack of enforcement, that the law is there but very often it is not enforced for one reason or another. I have included in my brief a very particular case which involved Lark Manufacturing Co. I included that case because this is the only case in which the ministry has actually prosecuted a particular employer for their violation of the Employment Standards Act.

The story of Lark is very simple. There are 148 workers. Most of them are Chinese-speaking. Many of

them have lived here for a long time. They've worked for the same employer for a long period of time, and one day they went to work and found out that the company had closed down, the factory closed down. Many of them have been owed months of wages and they were not given any severance pay, termination pay. They had no choice but to go to the Ministry of Labour through a communities agency, and it took the ministry two years to decide whether or not they were going to do anything about this, and in the end they did issue an order. The employer refused to comply with the order, and it took another three or four years before the case went to trial. Then the provincial court judge found that the employers were indeed liable for the half-million dollars that was owed to these workers, but it took another level of court and finally to the Court of Appeal before the workers got the final victory that it's confirmed that they should get the money back. But as of this time — it's seven or eight years now after Lark closed down — they have not seen a cent of the money, because the employers in the meantime declared bankruptcy but also opened and closed several factories, employed some of the same workers and even scammed the landlord. They didn't even pay for the rent.

It's that kind of situation that we are seeing, and Lark, unfortunately, is not an exception. We are seeing cases like that every day. Since Lark, we have dealt with three other cases of this nature and of this scale and scope, and on a day-to-day basis we see workers being denied minimum wage protection, denied vacation pay. It's just as common as traffic violations almost. I put down in my brief the comparison, that we spent so much money going after people who didn't pay for their parking tickets, and yet we are not paying as much attention to some very fundamental rights here, the right to be paid for the work that you have done.

Of course, there are many workers' rights advocates who have come before you and talked about the importance of maintaining and enforcing workers' rights, but even if we put aside these fundamental questions and we try to understand it from the perspective of the political reality of the day — this government over the last year or so has been talking about how people should work for their pay, whatever the source, that people have been penalized, welfare recipients have been penalized for not having worked for their welfare cheques. Here we are, we have a group of people, a sector of workers who have worked in order to get paid, but the government is telling them, "Sorry, we're not going to help you to make sure that you get your money back." Of course, in the end, it is the taxpayers who are paying for them, because many of them already are getting minimum wage. If they are not even getting that, what other alternatives do they have but to apply for welfare?

Even in that context, forget about workers' rights; just looking at the political agenda of the day, it doesn't even make sense. In particular, some of the objections that have been put forth, which we also included, and the recommendations that we adopted from groups such as the Employment Standards Work Group — some of the particular points are of critical importance to be addressed: the limitation period, the six-month limitation

period. Many of my clients, the day before they lose their job, they still would not go to the Ministry of Labour. They would only go because they have no other resource. They would only go because they have nothing else to lose, they don't have a job to protect, which is what happened in the Lark case, which is what happened in many other cases that I'm dealing with.

With respect to the minimum cap, I would suggest to you that whether it's minimum or maximum, employment standards violations — I guess in a way it's different from going to civil litigation and trying to assess the damages, you know, should we pay \$50,000 or \$20,000 punitive damages or whatever. Employment standards violation is very particular. Either you get minimum wage or you don't. Either you get severance pay or you don't. There is nothing magical about these numbers. It's very easy to assess and calculate, so there is really no reason why the cap should be put.

I think the only issue is how much resources you want to put into the ministry to ensure that whether it's a \$100 claim or a \$20,000 claim, you deal with them and in an efficient way. I guess that's the only point I would agree on with the previous presenter, that we do have to make sure the claims are being dealt with in a very efficient way and expeditiously. It's to the benefit of the employees as well as the employers.

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I close with a comment that a client of mine made to me one time. He was just amazed how difficult it is to get your money back, the money that he has already earned. So he made the comment about how it seems like it's easier for him to win a lottery than to get his money back. Unfortunately, sometimes that's how people feel. I guess maybe the government is saying, "Either we have a choice of helping you get your money or we'll build more casinos and you go and collect your money there." But that's absurd. The point is if people have to come to that kind of conclusion, it's really very sad.

I think we would urge the committee to really seriously look at some of the issues here, whether you are trying to deal with it as a workers' rights issue or whether you are trying to deal with it as an issue that will be consistent with the rest of your agenda.

The Chair: Thank you very much. That leaves us with bang-on two minutes per caucus for questioning. This time we'll commence with the official opposition.

Mr Hoy: Thank you very much for your presentation. You did very well speaking away from your notes, and you understand the issues quite well.

You have a concern for protection and then, coupled with that, enforcement. Enforcement of the act has been an ongoing problem. Would you have any opinion, if there were repeat offenders of the Employment Standards Act, that those companies' names would be made public? Do you think that would be of any advantage?

Ms Go: I have a stronger opinion than just making their names public, but I think that would be one way of going. Honestly, look at the offences that these people have committed. In effect, they are stealing the labour of the people; profiting by not paying the money.

In a way, I see it the same way I see theft under the Criminal Code. They, in effect, are stealing from these people, but I guess in our society we don't recognize it

as such yet. A lot of times when I look at these people — and some of them are from my community — I say, "If we are deporting drug dealers, we should be deporting these people." This is how strongly I feel about people who violate workers' rights. But I think a very good place to start would be to make their names public and just shame them.

Of course, we could also do the carrot-and-stick thing. We could also publicize names of employers who protect and honour their workers' rights, who work cooperatively with their workers. There are people like that. One example would be a Chinese restaurant, which is one of my favourite restaurants, that's run as a cooperative. It's one of the most popular restaurants in town. So I think it's both: We publicize names of employers who violate the law but also people who honour the law.

Mr Christopherson: Thank you very much for your presentation. We appreciate it.

You may have been in the room when the previous presenter was here, Mr Peter Mitchell of the Oshawa Clarington Chamber of Commerce. In his submission, he talks about the fact — one of the few who has actually been forthright enough to say and try to characterize the minimum threshold as a prevention of nuisance claims. Based on what we've heard across the province, I think many people would find that, at the very least, difficult to swallow and probably feel much more strongly about it being characterized as nuisance claims. I think this may get referenced a fair bit during today's hearings, so I'd like to know how you feel about the idea that a minimum threshold is necessary to avoid nuisance claims and how you see the reality of that.

Ms Go: Because the reality, as I see it, is that many workers would not actually come forward unless it becomes a very serious violation. I wonder how many claims the ministry actually receives are of such an insignificant amount. Even if there are workers who are courageous enough to say, "I'm not getting minimum wage paid, and even though I'm still employed, I'm going to file a complaint," I think that's all the more reason that the ministry should come forward to protect the worker and deal with the claim seriously, because if it doesn't, there will be continued violation in that same workplace. It's only a nuisance claim to the employer. It will not be seen as a nuisance claim for people, as you mentioned who are making only \$200 a week or whatever. Any money, even \$1, would not be a nuisance to them.

Mr Joseph N. Tascona (Simcoe Centre): The government's thrust with respect to Bill 49 essentially — and I think the consensus out of these hearings — is that the most vulnerable workers are non-union and not the union workers. The government resources here, the thrust of Bill 49, is to put in protections for the non-union workers, because the unions have the procedures and they have the resources to protect their own. That's where the government thrust is going in terms of all our resources to protect the non-union workers, because the non-union workers can be represented by the government and the union members can be represented by the unions. That's where the thrust is and that's where the resources are going.

There's also a consensus that there's need for change with respect to the enforcement. I frankly believe that the

employment standards officers are doing a good job of enforcement. The problem is that the collection rate is not satisfactory for anyone. The collection rate is 25 cents on the dollar. The change and the thrust here is going to be to put it into the hands not of the employment standards officers, which is a new function they were given in 1994, but into the hands of professionals. So what we're trying to do is change the collection process but also put the government resources to protect the non-union workers.

What I'd like to say about the Lark Manufacturing case is that I had some involvement in that in a legal capacity with the receiver at that time and I would say —

Ms Go: Yes, I think we were in the same firm.

Mr Tascona: That's right. In 1988 that case started and it finished in 1996.

Ms Go: Right.

Mr Tascona: I'd have to say that the government's commitment to bring those owners to heel under the circumstances — I think I have to commend them. The bankruptcy laws — they've gone bankrupt twice, as you noted — are the problem with them. We have no control over bankruptcy laws. That's under the federal jurisdiction, and we'd like to see some changes there. I think if we could see changes in the bankruptcy laws, that might protect workers from employers like that, because 50% of the time we can't collect because the employer goes bankrupt. That's a very important area that we don't have control over.

Ms Go: I agree with your last comment. There are certainly changes around the Bankruptcy Act that need to take place. However, I disagree with your comment that Bill 49 would actually enforce or enhance the rights of non-unionized workers for the reasons that I have outlined and many workers' rights advocates have outlined before you. However, just looking at the —

Mr Tascona: Why do you say that when we're going to put all the resources in non-union workers?

The Chair: Could Ms Go just finish her comments. We're over the time already.

Ms Go: For one example, the fact that you limit the six-month period, assuming that people would actually file the complaint right within that period of time when in reality many workers would not wait till they lost their job, for example, before they would file a complaint — and that could be two years or three years down the road. Even the two-year limitation sometimes doesn't cover all the assessment that could be made against the same employer.

Mr Tascona: But there has to be a time frame. You just can't let it wait.

Ms Go: But there's nothing wrong with the existing —

Mr Tascona: Thirty days —

The Chair: Sorry, Mr Tascona, but our time has expired. Thank you, Ms Go. We appreciate your taking the time to appear before us today.

BOARD OF TRADE OF METROPOLITAN TORONTO

The Chair: That leads us now to the Board of Trade of Metropolitan Toronto. Good morning. Welcome to the

committee. You have 15 minutes for you to divide as you see fit between either presentation or question-and-answer time.

Mr Sandy Douglas: Thank you very much. My name is Sandy Douglas and I am the director of employee relations for Consumers Gas and also a co-vice-chair of the board of trade's labour law committee. With me is the committee's chairperson, David Brady, who is with the legal firm Hicks Morley Hamilton Stewart Storie. On behalf of ourselves and our peers on the committee, we thank you for allowing us to address you today. David will be presenting our brief, after which we'll do our best to answer any questions you may have, but before he starts I would just like to point out that the outline of the board of trade is included in the kits that we have provided to you, along with a copy of our presentation.

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Mr David Brady: The principles we see in Bill 49 the board of trade supports. I think one of the things that shines through is that workplace disputes, to the extent possible, should be solved in the workplace by the parties directly and at the parties' expense. I'm thinking of course about unionized workplaces when I make that point.

Obviously minimum standards have to be established and maintained, as they have been in the Employment Standards Act, for all employees, but in unionized settings where compensation packages are negotiated in collective bargaining, the parties to collective bargaining, and particularly the bargaining agents, ought to be able to trade as between compensation elements such that the compensation package exceeds the minimum standards but can be configured by the parties themselves. Why is it that people away from the collective bargaining process think there is an answer, and a better answer, as long as there's a minimum standard that has been achieved from a compensation point of view and there are lots of elements to the compensation package?

In terms of adjudication and remedial ability, that was the focus of the previous speaker and obviously it is extremely important. The thing that ought to be endorsed — and it makes sense — is that if there is a workplace mechanism that is already in place and works, then that should be one that is built upon in terms of its use, and the remedial powers ought to include employment standards remedies.

The suggestion of course is that the grievance arbitration procedure be used, and that makes sense. You have a whole list of Ministry of Labour arbitrators who have had vast experience. They're knowledgeable. They're acceptable to the parties. They are known to the parties. Many collective agreements have rosters in them of the arbitrators that have been chosen at the collective bargaining table. These arbitrators have employment standards experience. It is not rare — in fact it can come up in the regular course of terms-of-employment grievances — that employment standards issues are front and centre.

Arbitrators know collective agreements because they appreciate the collective bargaining process. There's no cost to the public because it's a workplace issue that ought to be solved there, and the thing is, you'll have

better results. You've heard many presentations and I would be surprised in those presentations that someone has not addressed what referee decisions there are out there on a variety of subjects, in a complex circumstance that you're trying to simplify, that are simply inconsistent with each other. It depends on who the referee is with respect to where the resolution may come to by way of bottom line. There has to be more consistency. People have to be in a position to advise clients from a worker point of view and from an employer point of view with some sense of reliability.

When you have a labour arbitrator or a board of arbitration do this kind of work, you will have the cases reported in the labour arbitration case law. There will be consistency and precedent that are built up in a system that already exists, that's well respected and has been in place for I think 30 years. The grievance arbitration process works and it can work for the benefit of the workplace parties and for the benefit of employees and employers.

Combined with that, and perhaps a little out of sequence and maybe anticipating step 2 of employment standards reform, we think employment standards and occupational health and safety are prime candidates for best practices and accreditation, and we would hope that the focus on workplace and the focus on best practices coming out of the workplace is continued and made more complete in the next phase.

Coming back to arbitrators, since that is a very enforceable and familiar mechanism, there are a couple of questions that need to be sorted out. I know you've heard these questions before, but please bear with me. We have three. When you're looking at arbitration under the Employment Standards Act, you have to have the Labour Relations Act side by side and go through sections 48 and 49 to see what the powers are and how things work.

Will, for example, an employment standards circumstance have access to expedited arbitration that's provided for in the Labour Relations Act? Will there be, in an arbitrator's jurisdiction or a board of arbitration's jurisdiction, the power to extend time lines and deal with time lines? If you have a mixed matter between a collective agreement and employment standards where there is a knot of issues that has two different sets of time lines, a collective agreement and an Employment Standards Act time line, how do you sort it out? In our view, the best way to sort it out is probably to go to one set of time line rules, and that would be as negotiated in the collective agreement.

The last thing is, will decisions of arbitrators be, in a sense, reviewable or appealable? We would say that the section in the bill has to have within it the provision that the decision is final and binding in the same fashion that presently exists for a number of the employment standards officer provisions.

The next thing that we think is important as far as making things user-friendly is concerned, and I'm talking about from the entire community, employers and workers, is that we can't have a continuation of duplication of process. The civil action provisions as they relate to employment standards complaints are very important. I think they're very important for everyone. I'll give you

an example, and this is not an employment standards example but I think it hits the nail on the head. I was involved in a 40-day case having to do with sexual harassment. We were at the Workers' Compensation Appeals Tribunal. We were there for that length of time because it was associated with stress. In an office block away, at the same time, we were involved with a human rights complaint that was operating, separate track, concurrently.

There is the prospect in that circumstance of a complaint under the Occupational Health and Safety Act before the Labour Relations Board. There's also the prospect of a grievance under the collective agreement if there's a non-discrimination clause and some reference to human rights or, indeed, employment standards.

That cannot be allowed to exist because it breeds disrespect for the systems. It is too expensive. It is used by way of adversarial tactics, and I'm not critical of that. If it's there to be used in an adversarial tactical way, there can't be criticism, because that is how the systems operate. But I think you have an opportunity to make, in employment standards circumstances, as between the act and civil proceedings, something that works better, and hopefully you'll continue with that approach as you proceed with other amendments and other acts.

There's a lot of discussion about the \$10,000 and the minimum threshold that a claim might be required to have. We think that \$10,000 is a reasonable limit. It's not something that is brand-new to the act. There has been a limit in the past. The \$10,000, I think, would probably deal with over 95% of claims. There would be a very small percentage that would be seeking moneys in excess of that. Moneys in excess of that would likely attract someone to seek some legal advice, and there are I think now abbreviated processes in the courts for that to be followed there, which would include employment standards and any common law rights. We think the \$10,000 makes sense, because in terms of minimum standards I think the resources and the focus have to be where they are most needed. If you're looking at more than \$10,000, it would be, as I say, 4% or 5% of the claims, and there are remedies there with the legal advice that would presumably go along with it, in any event.

As far as minimum is concerned, I think any system has to have some practical definition. By "practical definition," it means it has to be workable and enforceable. By "practical definition," it means that the resources that go to support the claim and the enforcement of it are appropriate in the circumstances. I don't know if there's a magic number, but to the extent that the person who made the presentation ahead of us has said that there will be monetary issues that might be small in one context and large in another, there ought to be some mechanism. If that can be done by way of regulation or done in a way which is not hard and fast, where judgement can have an ability to be applied, then that to us makes sense.

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The time limits: The two years is presently in the act in a couple of ways, so there's not, I think, a dramatic change there. The 15 to 45 days makes sense to us because there is an opportunity in that 15 to 45 days to settle, to get advice, and that would be both with respect

to employees and employers. Again, we see something that has to have definition, that can be workable, that people can rely on. That has been what the system suffered from in the past.

We had one question in our brief about the government's statement of seeking to clarify vacations. In subsection (1) of that bill provision, it says "whether or not someone's been on the active payroll." You go down to subsection (3) and it talks about a calculation based on what someone has earned. They seem inconsistent to us. If someone has not earned any income, 4% of no income is still no income. At the same time, the message is, whether you're active or not, you have an entitlement.

So we think that there are conflicting messages. Expectations will be raised, but the practical application will be simply confusion for workers and for employers. We think that if someone has a vacation entitlement, it has to be identified and the 4% is there, but it should be on active employment, because, after all, it is a calculation that's based on what has been earned before. As it presently sits, in our view, it's simply not clarity. It is lack of clarity.

We are very supportive of the pregnancy and parental provisions that clarify the distinction between service and seniority; there is one, there always has been. It hasn't been appreciated in the statute, but I think, like referees, as I said earlier, we'll find different decisions blending the two concepts. It ought to be very clear in the statute, and I think a great stride has been made to bring that clarity.

I won't spend a lot of time in collections, just to underscore what you've heard before just this morning. It makes sense that resources go to where the best chance of collections are. I think any record better than 25% has to be a huge accomplishment, because at this point it's simply not acceptable. Thanks very much.

The Chair: Thank you. That leaves us with fewer than 30 seconds, so we appreciate you scheduling your time very efficiently there and certainly appreciate you coming before us and making a presentation on Bill 49 this morning.

32 HOURS:

ACTION FOR FULL EMPLOYMENT

The Chair: That takes us to our next presentation, 32 Hours: Action for Full Employment. Good morning and welcome to the committee.

Mr Anders Hayden: Good morning. My name is Anders Hayden. I'm with 32 Hours: Action for Full Employment. I would like to thank the committee for the opportunity to speak today. Our group is a member-driven organization committed to a reduction and redistribution of work time in pursuit of a more economically just and more ecologically sound society with a high quality of life for all.

Our group is composed of citizens from a wide variety of backgrounds. What unites us is a deep concern about the intolerably high levels of unemployment in this province and in this country and a belief that the solutions that we've relied upon in the postwar era to solve our economic problems are no longer up to the task as we enter the 21st century.

With respect to Bill 49, we are concerned about the proposed amendments to the Employment Standards Act, which we believe threaten to exacerbate the irrational situation of some people working excessively long hours while others remain unemployed. As an alternative, we suggest the government begin to move in an opposite direction, towards a reduction and more rational distribution of work hours.

We're concerned about two features of the government's agenda. First, the amendments in Bill 49 serve to weaken the enforcement of all employment standards, including those related to hours of work. Secondly, the government has made clear its intention of eroding the existing standards for work hours, overtime pay, public holidays and vacations.

With regard to enforcement, as I said, we're concerned about enforcement in this province and the lack of enforcement currently. Among the most common complaints on the Ontario Federation of Labour's bad-boss hotline are abuses of standards for hours of work and overtime pay. We were struck by the testimony in this committee by an anonymous individual from Sri Lanka who was working 56 hours a week before his employer pressured him to work 70. This lack of enforcement of employment standards is not a new problem; however, rather than improving the situation, we believe this bill would actually worsen it.

Bill 49's provisions regarding enforcement of employment standards have been very well critiqued by others, such as Osgoode Hall law professor Judy Fudge, whose analysis we have endorsed. We would just like to highlight some of our main concerns.

If Bill 49 is passed, the one third of Ontario workers who are unionized will not have access any more to the enforcement system that's currently in place. We believe that this will put increased pressure and burdens on unions. Those unions with limited resources and negotiating power will not always be able to succeed in pursuing employee rights. This amounts to making the enforcement of the act a question of might rather than right. The result can only be weaker enforcement and a greater number of violations of employee rights.

As for the more vulnerable non-unionized workers, we find it difficult to understand how the government can express so much rhetorical concern for them on the one hand, while at the same time putting more obstacles to the pursuit of their rights. The time limitations, for example, limiting the time for which employees have to make a claim to six months, put a major new obstacle to employees, who often will not make a claim until they feel secure in new employment. Six months does not give them adequate time to find that new employment. The limit of \$10,000 for money that the employees can claim through the ministry, as well as the clause allowing the government to introduce a minimum claim, will make it more difficult for employees to recover money owed for wages, vacations, overtime pay and so on.

Also, with respect to the privatization of collections, we agree with the government that something has to be done to improve the very low rate of collections; however, we're rather sceptical about whether this is the answer. We see no evidence that privatizing collections

will improve it. In fact, we've seen evidence to the contrary. There was a recent article in the *Globe and Mail* which provided such evidence. Furthermore, the privatization of collections could create new pressures on employees to settle claims for less than they are owed.

It's difficult to understand the rationale for these changes in terms of their benefit to the people of Ontario, but we believe there's little doubt about their effect. Employers will have less and less to lose and less chance of being caught if they ignore the law, including making their employees work longer hours, not paying overtime premiums or not providing vacations. This isn't just bad news for the people in Ontario who work for unscrupulous employers; it's terrible news for the unemployed, who would benefit most from stronger limits on overtime and long hours.

The first thing that got us concerned about this legislation was a clause that is no longer in there, temporarily. That was the clause that would allow the negotiation of flexible standards for hours of work, overtime rates, vacation pay, statutory holidays and severance pay and that would allow negotiation of standards that are weaker than what's in the act. Although the minister has since withdrawn that clause, she has stated that it will be resurrected in the comprehensive review. The government has made its intention very clear with respect to the oxymoronic idea of flexible standards. I think this deserves at least some brief comments.

With hours of work, overtime rates, vacation pay and public holidays about to be up for grabs in collective bargaining, the result, in practice, would be a disappearance of the guaranteed minimum protections on these matters. Although it would require agreement by the union in question, in today's economic climate of high unemployment and high capital mobility there will be considerable pressure for workers to agree to less than minimum standards, and employers would almost certainly expect any flexibility agreed to by unionized workers to be matched by non-union members as well.

1030

If any significant erosion in minimum entitlements regarding hours of work became widespread in those workplaces where employees do not have sufficient bargaining power to resist employee demands, it would put downward pressure on standards for all Ontarians. Avoiding such a destructive race to the bottom is exactly the point of employment standards, but in the name of flexibility the government seems to be considering wiping out the basic floor protections that have limited excessively long hours.

Every workplace that increases hours of work is taking away employment opportunities from those who are unemployed. A year or so ago there were about 20,000 people lining up on a bitterly cold day outside GM trying to get a chance at work. None of them have been hired to date. What chance will those people have of being hired in the future if GM is successful in getting what it has said it wants in a collective agreement: 10-hour days and a 56-hour week?

In short, these amendments will make it more difficult for employees who are victims of employer abuse with respect to hours of work, overtime pay, vacations and

other matters to have their rights enforced. This amounts to a signal to unscrupulous employers that abuse is tolerated, while scrupulous employers who respect their employees' rights will be put at a competitive disadvantage. This is troubling enough, even without taking into account the government's future plans for negotiation of flexible standards.

We ask whether this is the Common Sense Revolution. Common sense tells you that if you're making it easier for employers to make their employees work 50 or 60 hours a week, you're going to be eliminating jobs rather than creating them. By furthering the irrational trend towards polarized hours of work in which many workers are working long hours while unacceptably high numbers of people have had their work hours reduced to zero, the government will also be needlessly worsening its own financial picture. These measures will lead to higher costs for social assistance and other public expenses related to unemployment, resulting in higher government deficits.

These proposals are not about cleaning up the excesses of recent governments. They are a rollback of some things that Ontarians have taken for granted for over a century. If you go over to the Whitney Block on the grounds of this Legislature, you'll see a historical plaque commemorating the printers' strike of 1872 which led to a nine-hour workday. If the original amendments in Bill 49 are implemented, even that modest achievement will not be secure.

We in 32 Hours: Action for Full Employment think a very different and bold approach is required, one that will address the problem of unemployment and the situation of the unemployed and the underemployed.

We see a world today where there is more and more division between the haves and the have-nots. One of those inequalities is between those working excessively long hours of work and those who have no work at all. In many families, you have a total workweek of over 80 hours in the family now, both partners working full-time. Many people are faced by a time squeeze, an unmanageable one, which has negative effects on mental and physical health and very significant detrimental effects on family life. At the same time, we see the number of unemployed and underemployed rising.

There's a major job crisis in this province and in this country. We know that official unemployment statistics are still around 10%. There's also a much higher rate of unemployment for youth. I'm a student myself. I see future job prospects out there to be pretty bleak. I'd like to ask the members of this committee as well to consider whether they believe that the job prospects for their own children are very positive in the future and whether we can resolve the job problem while relying solely on conventional measures.

It's worth taking into account the historical record of the reduction of work time. Between 1800 and 1950 work hours were reduced significantly through achievements like the 10-hour day, followed by the eight-hour day and the five-day week. Sharing the work helped to ensure that labour-saving technology created leisure, not unemployment. After the Second World War, we seemed to have abandoned that winning and proven strategy and Canada's level of unemployment has been rising since then.

In the late 1940s and early 1950s the norm for unemployment was 2% to 3%. Now our norm is around 10%. In the next recession unemployment could skyrocket even further because governments don't have the financial resources available to run fiscal expansion to moderate a crisis. We've been moving up an unemployment staircase and it's time we got off it. Reduced work time has been a big part of our history and it needs to be part of our future too.

I'd just like the government and the opposition members of the committee to think for a second about the high financial costs of high unemployment in addition to the human costs. We have very high costs for unemployment insurance and for welfare programs, as well as the additional health costs related both to overwork and unemployment. We also have higher costs for crime and policing in addition to lower consumer confidence and the sluggish domestic economy that's being held back by high levels of unemployment.

If we had full employment in this country, along with stronger controls on long work hours, we might have no federal or provincial deficits. We are already paying an enormous cost for the fact that many workers have had their work hours reduced to zero.

The members of the committee should also be aware that there are a number of examples, not only historically but also currently in the world today, where work hours are being reduced. There are cases of BMW and Hewlett-Packard, for example, in France and Germany that have managed to reduce work hours, keep pay constant and actually improve competitiveness because this was done in a way that allowed for more effective use of capital and longer operating hours. We have examples in Canada at the Chrysler minivan plant in Windsor where work hours were reduced, overtime was reduced and a third shift was added. These are the kinds of measures we need today.

We believe that a better distribution of work time can open up jobs for the unemployed and can improve the quality of life for the overworked. At a time when many suffer from a severe time squeeze, shorter work hours can give us time for family, community and ourselves. It can create new opportunities and hope for young people struggling to enter the workplace. By putting people back to work it provides a humane alternative for reducing government spending on unemployment and social assistance, thus helping to reduce deficits, and it can do this without increasing our demands on the environment.

Getting back to the employment standards in Bill 49, we have some alternatives we would like to suggest to what the government is doing.

We believe that the most direct and effective way to reduce unemployment is a reduction of the workweek. We therefore call on the government to begin the process of moving towards a 32-hour standard workweek. An immediate move to a 40-hour standard workweek, as recommended by the 1994 federal Donner report and the provincial Donner report in 1987, would be a positive first step.

Also, to ensure that a shorter standard workweek leads to new hiring, there's a need for better controls on overtime. We would encourage the government to

introduce a maximum of 100 hours of overtime per employee in excess of regular working hours per year, for which compensation could be paid. Any overtime above that 100 hours would have to be compensated through time off in lieu of overtime. This was something that was also recommended by the Donner report. Employees should also have the right to take all overtime as time off in lieu if they so choose and employees should have the right to refuse all non-emergency overtime.

Reduction of work time is not only a question of a shorter workweek. There are other ways in which work time can be reduced, allowing social needs to be met, quality of life improved and opportunities for new hiring to be opened up. The Employment Standards legislation should be revised with this in mind. Some of these measures could include:

- The right to three weeks' paid vacation. This would still leave us far behind most European nations where the norm is four to six weeks.

- Guaranteed rights for employees to take unpaid extended vacations.

- Improved parental leave, as recommended by the Donner report, and the right for employees to take at least five days of family leave per year, linked to the care of children or elderly family members, as also recommended by the Donner report.

- Improved rights to sick leave and a basic entitlement to unpaid education and training leave are measures that could be added.

Furthermore, the employment standards legislation needs to take into account the increasing number of workers who do not have regular full-time employment. Improved standards are needed both to protect those in non-standard employment and to make the option of working part-time a more attractive one for those who wish to do so.

We urge the government to ensure that part-time, temporary and contractual workers receive the same hourly pay as regular full-time workers, the same employment standards protections, a fair share of benefits, and seniority rights. We also believe there should be a guarantee for individuals who want to work fewer hours to have the right to do so. No employee should be denied a request for reduced hours unless it is absolutely not feasible for that particular job.

Furthermore, we call on the government to vigorously enforce employment standards, especially for part-time workers and those outside the normal workplace environment, as recommended by the Donner report and by others. We believe this should include routine inspections of employers and real protections from employer reprisals for employees who lodge a complaint.

There should also be aggressive education about worker rights. For example, many salaried workers have the right to overtime pay under the legislation, but they're not aware of this. Many people aren't aware of this. This type of education should be provided by the government.

You will notice I've quoted quite extensively from the Donner report. It's come to my attention that some of the previous submissions to this committee have used the Donner report to argue in favour of flexibility regarding work hours. I'm not sure which Donner report those

people would be referring to and which Arthur Donner they're referring to. The Arthur Donner who was with us at a press conference yesterday is definitely not in favour of flexibility upwards in terms of work hours. He came out very strongly in favour of nothing longer than a 40-hour week, no flexibility above a 40-hour week.

The Chair: Excuse me, Mr Hayden, we're well over our time, if you could make any brief, concluding comments.

Mr Hayden: In conclusion, I urge the government to reconsider its proposals and to start moving in the opposite direction, towards an Ontario with a rational distribution of work hours, where everyone has a right to a job at a fair standard of compensation, balanced by the right to leisure and time for oneself, family and community.

The Chair: Thank you very much. We appreciate your making a presentation before us here today.

1040

UNITED STEELWORKERS OF AMERICA, LOCAL 5296

The Chair: That now takes us to the United Steelworkers of America, Local 5296, security officers. Good morning and welcome to the committee. Just a reminder, we have 15 minutes and you can divide that as you see fit between presentation or question-and-answer time.

Ms Renate McIntosh: Good morning. I'm Renate McIntosh. I'm president of Steelworkers Local 5296 representing 1,400 security guards who work for six different employers at over 600 sites across the GTA.

In the security industry it's difficult enough to police the employers because of the large number of sites and their locations which are dispersed throughout the GTA. There are as little as two or three officers working at some of the sites and they're all on different shifts. Most of our members make just above the minimum wage, at slightly above minimum standards. Now this government is threatening to remove these hard-fought standards and drag my members down in a rush to the bottom of the wage scale.

Prior to the election of this government, it was illegal for a collective agreement to have any provisions below the minimum standards set out in the Employment Standards Act. This government intends to allow a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay.

We the union members and the employers are being asked to value and compare non-monetary rights such as hours of work with purely monetary rights such as overtime pay and severance package and mixed rights such as vacation pay and public holidays. Given the economic power employers have over employees, the removal of basic employment standards can only result in circumstances in which detrimental tradeoffs are "agreed to" despite the measurement problems referred to above.

This will allow employers to put more issues on the bargaining table which were formerly part of the floor of legislated rights. It will also enable employers to roll

back long-established fundamental entitlements such as hours of work and the minimum two weeks of vacation. Our union just finished negotiating three weeks of vacation for employees with more than eight years of service. Many guards are looking forward to this benefit and now even this small gain may be eroded if traded off for better wage rates or changed hours of work.

The security industry is a very competitive industry. There are many small overnight security companies that are underbidding the more established firms that now pay their guards above the minimum wage. These new firms offer no benefits, no training and pay minimum wages to their workers, thus undercutting the firms that are providing more than minimum wage and training. Armed guards are generally the better paid in the industry, averaging \$12 per hour. How long will it be before these people are paid just the minimum wage? How would you feel knowing someone who is required by the employer to carry a gun and risk his or her life is being paid minimum wage with no benefits?

With this government's desire to privatize, more and more jobs formerly done by well-trained public servants will be contracted out to these so-called more competitive security companies which, in an effort to make a profit and cut costs, will put inadequately trained people into these new positions at substantially less pay, and ultimately put the employee's and the public's safety at risk.

How would you as MPPs feel knowing that the guarding this Legislature were paid minimum wages with little training, or for that matter, the guards in the private prisons this government wishes to establish? You've already done this to your cafeteria staff. These guards, if you contract out, would be faced with a significant cut in pay and benefits. These are going to be the people protecting you. Think about this.

The short-sighted may see this rush to the bottom as helping employers to become competitive and governments more efficient, but the more sane will question whether this makes for higher productivity, better workplace relations or a safer society.

Currently under the ESA, organized employees have access to the considerable investigative and enforcement powers of the Ministry of Labour. This inexpensive and relatively expeditious method of proceedings has proved useful, particularly in situations of workplace closure and with issues such as severance and termination pay.

At present labour-management relations are relatively harmonious in my local. Both the Steelworkers and the employers are working to unify standards in the security industry so that security officers can receive better wages and the employers can compete on a more level playing field and provide a good-quality service. If this government brings in the changes it intends to legislate, this harmonious situation will go in the opposite direction and could become very adversarial between us, the union, and them, the employers.

The government's so-called minor changes to the act allow it to unfairly pass off the obligation and associated liability involved with administering a public statute on to employees and their unions when it is the employer who have violated its provisions. Costs will also increase for the employers because more complaints that th

employment standards branch could have handled more efficiently and cost-effectively will now go before a private sector arbitrator that costs about \$2,000 per day for the union and the employer.

Not only will security companies have to compete with firms undercutting them unfairly on bids, they will also have the added costs of paying for more arbitrations. This avenue requires all unionized workers to use the grievance procedure under the collective agreement to enforce their legal rights. The union will bear the burden of investigation, enforcement and their accompanying costs. The director can make an exception and allow a complaint under the act where he thinks it appropriate, but for all practical purposes, the enforcement of public legislation has been privatized.

Arbitrators will now have jurisdiction and make rulings that were formerly in the purview of an ESO, a referee or an adjudicator. They will not be limited by the maximum or minimum amounts of the act. However, arbitrators lack the investigative capacity of the ESOs and will not be able to match the consistency of result that the act has had under public enforcement.

Most important, employers could argue that as boards of arbitration do not have the critical powers to investigate whether particular activities or schemes were intended to defeat the intent and purposes of the act and its regulations, such cannot be determined. In such circumstances unionized employees could well be left with no recourse whatsoever. This is particularly evident in cases of related employer or successorship provisions of the act. It is difficult to see how such provisions can be applied when the successor or related employer may well not be party to the arbitration proceedings.

Security officers are especially vulnerable to this change because of the nature of the business. Clients and contracts are won and lost on a regular basis. Guards can change employers several times in short periods of time because of this. Some guards may be employed with three different companies in a three-year time period and never have their wages increased. Usually wages are cut because their successor employers are not obligated to guarantee them the same working conditions they had with their previous employers.

1050
In conclusion, as noted in our introduction, these amendments come on the eve of a comprehensive review of the act. The proper and just procedure would have been to include these changes as part of such a review and not to try to pass them off as housekeeping changes. But beyond this, the core of the problem is the very nature of the amendments themselves.

As our comments already made clear, established standards should not be eroded, should not be made negotiable, basic rights should not be made more difficult to obtain, and enforcement of such basic rights should not be contracted out and privatized. The bottom line means slashing \$10 billion from Ontario's budget in order to pay for the tax break for the wealthy, while at the same time demanding from security guards, that are paid just above the minimum wage, to give up their basic rights benefits.

In addition, most of my members can't afford to own homes and therefore live in rental accommodation. Now

this government wants to not only take away their basic minimum standards at work, it also wants to take away another fundamental right, the right to attain and maintain a decent standard of living.

In closing, I would like to thank the committee for allowing me the opportunity to present our concerns regarding the issues that I've chosen to speak on. But I would like to re-emphasize that this government's gutting of employment standards will lead only to more adversarial working relationships and much more labour strife in this province of Ontario.

The Chair: Thank you. That allows us one minute per caucus for a brief comment or question, starting with Mr Christopherson.

Mr Christopherson: Thank you very much for an excellent presentation. I want to focus on the issue of the flexible standards because although it's been pushed off for further review, we've already heard from the minister that it's coming.

We heard this morning from Mr Brady of the Board of Trade of Metropolitan Toronto, who talked about this as something that — and I'm paraphrasing — he believed employers and employees and their unions should be interested in and pleased with. In fact, yesterday Ms Swift of the Canadian Federation of Independent Business in her brief said, "It was with some surprise that we learned of labour disenchantment with this provision, as we would have thought that negotiating better packages and representing their members was unions' *raison d'être*."

Why are unions so concerned about this and why don't you see this as one big gift that this government's offering you?

Ms McIntosh: I think it will probably slow down the bargaining process. Previously you weren't even allowed to include in a collective anything that was below the minimum set out in the act. But this new provision would allow the employers to bring things to the table and try to trade off with something that isn't going to give them any hardship, but it's going to make it slow down.

There are several collective agreements now in place. With one in particular, the United Plant Guard Workers of America, whose collective agreement is your basic employment standards which now they would be able to try to negotiate an agreement that's even below your basic minimum rights. It's just going to slow down the process and give the employer an extra added advantage over the employee like the guards who are already at the bottom end of the scale.

Mr John R. Baird (Nepean): Thank you very much for your presentation. We appreciate it.

Just a comment more than anything. You mentioned a few times in your presentation about the privatization of collections, to farm that out to collection agencies. I guess just to explain our rationale in doing that is — you mentioned it on the second-last page of your brief — our concern is that right now and for the last five or six years we've only been collecting about 25 cents on the dollar. After an employee gets the courage to come forward, learn their right and complain, after investigation, after the appeal expires — right now out of about \$64 million we're only collecting around \$16 million for them, only

25 cents on the dollar. We're not satisfied with that and our view is that tinkering isn't going to bring about remarkable change.

If there was a way of making it better, certainly we would have been keen to do it. I know the previous government would have been equally keen. The Liberals would have been equally keen when they were in government. We're hoping that privatization, bringing in professionals, someone with 25 or 35 years of experience, to go after these deadbeat companies will lead to an increase in the collections rate, because we've got to do a better job than 25 cents for workers. It's a real disincentive to the whole process with respect to enforcement. If people know they're only going to have to pay 25 cents on the dollar or not pay anything, they're less likely to obey the act. That's certainly a priority for us.

Mr Hoy: Good morning. I appreciate your presentation today. Your local represents 1,400 security guards who make near the minimum wage. The perception that those would belong to a trade union or a union making large amounts of money is not true in this case, so it's very good that you're here.

The MPPs being guarded by people on minimum wages actually appeared in a movie once. It wasn't MPPs, it was a political person. In a humorous vein it livened the theatre, but on a more serious side people with such responsibilities have to be paid well.

The creative nature of employers was shown in the news this morning. I didn't get to see the whole report, but there was an attempt to unionize a workplace in British Columbia. The employers are saying that the employees are part owners, so therefore they can't become unionized. I did not see the whole report.

But it's very clear that employers are creative with their employees and circumstances can happen, and I appreciate your brief as it pertains to security guards.

The Chair: Thank you both for taking the time to make a presentation before us here today.

SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES

The Chair: Leading us to our next group, the Society of Ontario Hydro Professional and Administrative Employees. Good morning and welcome to the committee. Again, we have 15 minutes for you to divide as you see fit.

Mr Mario Germani: Thank you for having us here this morning. We're just going to really have a summary of our submission to the committee. I believe the committee members have both the full submission and our oral presentation today.

The Society of Ontario Hydro Professional and Administrative Employees has been representing professionals at Ontario Hydro for over 50 years, and we currently represent over 5,000 engineers, scientists, supervisors, other professionals and administrative employees at Ontario Hydro. We are committed to working cooperatively with Ontario Hydro management in the delivery of an essential service to the people of Ontario.

The society is opposed to the passage of Bill 49. We feel that the majority of this bill would cause harm to

working professionals in Ontario, and especially unionized professionals. The changes will cause severe labour relations difficulties for both employers and for the unions. The pressure on minimum standards will reduce the quality of labour in Ontario.

The most alarming aspects of Bill 49 are those aimed at unionized employees. Subjecting Employment Standards Act minimum standards to possible erosion through the collective bargaining process, and shifting the burden of enforcement and adjudication to employers and unions, are changes with only negative implications. It is fundamentally unfair to deny avenues of recourse to unionized employees that are available to other employees. Subjecting unionized workplaces to different and potentially lesser protection under the act would have a negative effect on labour relations in the province.

I will address first the proposal that only unions have responsibility for enforcing employees' rights under the Employment Standards Act in unionized workplaces.

At present, where employers in a unionized setting violate the Employment Standards Act, employees have the option of addressing the problem through the grievance process or by calling an employment standards officer of the Ministry of Labour. This is perfectly sensible because often employment standards issues are linked to other employment-related issues and the grievance arbitration process is appropriate so that issues can be resolved globally.

Nevertheless, there are many cases where it is preferable for employees to resolve their problems through the employment standards process. There may be complex issues which an employment standards officer would be uniquely qualified to resolve. An employment standards officer has extensive powers to investigate under section 63 of the act, and there's also the advantage of having a neutral third party responsible for mediating a solution or conducting a thorough investigation.

1100

I think the members of this committee are aware that employment standards can be extremely complex and that the act can be subject to different interpretations. Government enforcement ensures an even, consistent application of the act's provisions.

The grievance arbitration process does not provide for investigative procedures, and certainly there would not be the intervention of a neutral third party unless the complaint does proceed to arbitration.

Given these differences, unionized workers would undeniably be subject to a lesser standard of investigation and neutral mediation than other employees in the province. There would be less consistency in application of the act across the province, given that the grievance-arbitration process could develop different approaches to the act than those of the Ministry of Labour. Finally, unionized employees would be denied the freedom to choose their preferred avenue of recourse.

Under the Ontario Human Rights Code, employees may elect to pursue their complaints either through the Ontario Human Rights Commission or through union representation in the grievance process. The code permits the commission not to deal with the complaint if it is more appropriately dealt with in another forum. The

society proposes that a similar power be given to employment standards officers, that is, to reject a complaint if it is in fact more appropriately dealt with in another forum. This could be the case if there are multiple interrelated issues, not all arising under the Employment Standards Act, or if a grievance has already been filed dealing with the issue.

We submit that this is a much fairer approach than to limit the freedom of employees in Ontario to choose the avenue that is most appropriate for them. Above all, it is inappropriate to set up a system which denies unionized employees the advantages that the government system provides in other cases. In fact, this approach is inconsistent with the principles of workplace democracy which the Minister of Labour espoused during the promotion of Bill 7.

I now turn to the issue of negotiable standards. The proposal to make employment standards negotiable clearly runs contrary to the long-standing principle reflected in the current act that certain minimum mandatory standards should apply to all workplaces in Ontario.

We understand that the Minister of Labour has proposed that the provision for negotiation of employment standards be removed from Bill 49 but remain concerned that this proposal will be back on the table in the next bill. The proposal would place incredible burdens on the collective bargaining process. If minimum employment standards are put on the bargaining tables of Ontario, the following outcomes are likely:

Before discussion commences, the parties will debate the appropriateness of negotiating employment standards, and stand-offs are likely to occur.

If employers insist upon renegotiating minimum standards and unions insist on maintaining these standards, parties may have to apply to the Ontario Labour Relations Board to determine whether one or the other is bargaining in bad faith.

If parties do enter into discussions around negotiating a new package, unresolvable differences are certain to arise as to how the total package will be measured and whether it satisfied the requirement that it confers greater rights in the specified areas.

If management insists upon a package which reduces some entitlement under the act, will employees have to go out on strike to maintain a minimum standard that non-unionized employees have by right?

Given these difficulties, it is understandable that the minister has proposed to postpone this amendment. Nevertheless, it would be preferable to discard the amendment altogether. It would, as illustrated above, cause extreme disruptions in collective agreement negotiations, which in turn would have a negative impact on labour relations in the province. More importantly, opening up these legislated standards to bargaining goes against the tradition of fair treatment for all employees in Ontario, of which we can be currently proud.

Other changes in the proposed Bill 49 are far from a mere procedural house cleaning. Introducing limitation periods, restricting avenues of recourse and placing limits on the amounts recoverable will all effectively reduce the employees' entitlements.

These changes are taking money out of the pockets of innocent employees and putting it in the pockets of guilty employers. We find it somewhat astounding that the government would be promoting changes which reward lawbreakers, but that is exactly these procedural amendments would be doing.

The society also opposes the privatization of collection under the Employment Standards Act. We have genuine concerns about granting independent operators, who have no political accountability, this important responsibility.

I will now turn to a proposal which the society feels could positively address the current trend towards job erosion. We propose that in the interest of balancing legislation, the government should consider measures that would have a positive impact on employee productivity and employment levels in the province.

One area of concern to our members at this time is increased expectations of overtime work. This trend is a direct result of the severe reductions in employee numbers in many workplaces over the last several years. As a result of these reductions, employers are putting increased demands on employees to work excessive overtime hours. These demands have a negative impact on employee health and safety and effectively mean that there are fewer Ontarians working.

Engineers and many professionals are exempt from overtime and hours-of-work provisions under regulation 325 of the act. In the current climate which we have described, we suggest that professionals need these protections as much as other employees. The government should revisit the rationale for this exclusion and consider repealing it.

Two measures which have positive impact for those not exempt from these provisions would be: requiring employers to pay overtime rates for hours worked in excess of 40 hours per week, instead of the current 44, and raising the minimum overtime rate to double time from the current time and a half for overtime worked on weekends and statutory holidays. If employers could not rely so easily on requiring employees to work overtime, layoffs would decrease and employment rates would not be at their current alarming levels. If the government is dedicated to balance in labour relations and to improving Ontario's employment levels, it should be addressing these issues.

In conclusion, we submit that the Bill 49 provisions aimed at unionized employees would make unionized workplaces subject to differential treatment under the act, would put additional burdens on employers and unions in both the bargaining and the grievance process and would cause labour relations difficulties. We are also concerned that the proposed procedural amendments would reduce employees' entitlements under the act, and that this will benefit no one but employers who have violated the act.

For these reasons, we urge the government to reconsider the amendments we have discussed above and to consider our proposals respecting overtime provisions.

That's the end of our presentation. If you have any questions, we will gladly respond to them.

The Chair: That leaves us four and a half minutes, or a minute and a half per caucus. This time the questioning with commence with the government.

Mr Baird: I appreciate your presentation. In your situation, could you tell us, how many Employment Standards Act complaints would you deal with in a year? Do you have any idea?

Mr Germani: We don't have the statistics on that since they would be done directly through the labour ministry itself. We don't get involved with those.

Mr Baird: Can you repeat that? I'm sorry, I didn't hear that.

Mr Germani: We don't have information on the numbers that are involved.

Mr Baird: Would you expect, in your experience just in general with trade unions, that most employment standards complaints would be dealt with through the regular collective agreement process in terms of the bargaining agent? For example, if a company that has had a collective agreement to pay the workers \$15 an hour decided it will only pay them \$4, that they wouldn't go through their bargaining agent to say: "Listen, the agreement says \$15; I'm only being paid \$4. That's obviously below the minimum wage and not living up to the collective agreement?" Generally speaking, many of those provisions will — obviously the contract in their collective agreement would be greater.

Mr Germani: Certainly any provisions that are part of the collective agreement would be subject to the grievance arbitration process. Here we're talking about things that aren't in the collective agreement, and that would increase the possible numbers of cases that could go to the board.

Mr Baird: Do you have an example of something that wouldn't go through the collective agreement now?

Mr Germani: I guess one employment standards area would be perhaps in the nature of parental leave, maternity leave. There are some fairly complex areas in that, and that's perhaps an area that the employment standards people are more expert at dealing with.

Mr Baird: Certainly in the provisions of the act we've attempted to clarify the parental leave and pregnancy entitlement.

Mr German: That's right, and you're aware of course that most of the Employment Standards Act provisions are themselves bare minimum, so most union agreements would have provisions above those. We wouldn't expect a lot of those to be part of the complaints to either ourselves or to the employment standards officers.

1110

Mr Hoy: Thank you very much for your presentation. The government has coined this phrase, "flexible standards," and we're getting a number of submissions that frankly don't think the two words go together. When that comes back later on when the minister brings her plans back, I expect the government will change that to some other name so that it fits better. I wait to see what they do with the phrase "flexible standards." It is done quite often that when you have a phrase that is not well received, people simply change the word. "Publicly funded" has become other things to other people as they change the word to get away from things that aren't accepted well.

Shifting the burden of enforcement and adjudication to the unions: There's a perception I think within the

government that the unions can well afford to do this; they either have the money right now to invest in the enforcement or they can accumulate dollars. Do you have any comment about that?

Mr Germani: I can't comment on whether unions have a lot more money available to investigate, but it's clear that there would be some shifting of costs and expenses from a regulatory agency that is imposing the minimum standards to some other body. We have no problems with enforcing our own provisions of the collective agreement if they are part of the collective agreement, but we do not want to be involved with a lot of other areas that aren't part of the collective agreement.

Ms Mundy McLaughlin: I just want to add something to that, and that is that it's obvious there would be increased costs to employers as well as unions, because if these sorts of complaints end up going to the arbitration process, that cost is covered by both employers and unions. It's not merely a shifting of costs to unions; it's to employers as well. As well, all the investigation that is now handled by the government would have to be dealt with through the grievance process somehow.

Mr Christopherson: Thank you very much for your presentation. I think it's helpful that you're here, given that you are the antithesis of what I think some Tory backbenchers envision when they think of people representing unionized workers or other workers. They often think of them as wild-eyed Trotskyite reactionaries or just poor little simpletons who don't understand the broader meaning of the world and therefore couldn't possibly comprehend why this legislation is necessary. The fact that you represent scientists and engineers and other professionals I think adds a great deal of credibility to those who are arguing that this is not good labour legislation.

After you see the impact on the organized labour movement in terms of the effect of this bill, what do you think ultimately that will do to the working poor, who don't have the benefit of a union and who only have the Employment Standards Act as the barest protection available?

Mr Germani: Some of the changes that we have seen in the act would seem to be taking away some of those rights of the working poor, who do not have access to unions. It would limit, first of all, the amounts they can collect under the act. It would limit the time frames in which they can claim redress for some of the past problems. In fact I think you're quite right; some of these changes in the act would have as many or in fact more implications for people who are at the bottom end of the scale and do not have the protection of the unions than those in some other areas, although it does have impact for both unionized and non-unionized employees.

The Chair: We're at 17 minutes. I'm afraid I'll have to cut things off. Thank you very much for taking the time to make a presentation before us.

LABOUR COUNCIL OF METROPOLITAN TORONTO AND YORK REGION

The Chair: That leads us to our next group, the Labour Council of Metropolitan Toronto and York Region. Good morning and welcome to the committee. We have 15 minutes for you to divide as you see fit.

Mr David Kidd: Thanks for inviting us. My name is David Kidd. I'm a delegate to the labour council and I'm attending here with our treasurer of the labour council, Shannon Hall, Canadian Union of Public Employees.

The Labour Council of Metropolitan Toronto and York Region has over 400 local unions affiliated with us in the Toronto area. We represent approximately 181,000 members.

First of all, we'd like to go on record in attending this hearing as calling clearly for the elimination of Bill 49, the so-called Employment Standards Improvement Act that we are here to discuss. Contrary to its name, Bill 49 does not provide real improvements to the Employment Standards Act that would enhance workers' rights at work and improve their economic wellbeing.

The labour council of Metro Toronto for many years has worked in coalition with numerous community organizations on diverse social issues of mutual interest. We were encouraged that the pressure of organized labour has been successful in having the articles of Bill 49 deleted that would have allowed employers to bring to the bargaining table the issues of hours of work, overtime pay, statutory holidays and severance pay for now. We understand that the minister and the government intend to bring this back later with the further review. We are still here today to call for the elimination of Bill 49 because of the negative impact the remaining amendments will have on non-organized and organized workers across Ontario.

We contend that the provincial government was elected with no mandate to deregulate or weaken the provisions of the Employment Standards Act. There's no reference at all in the so-called Common Sense Revolution. Bill 49 starts this process and the government has gone on record to declare that it will establish a full review of the entire Employment Standards Act later this year with the stated intention of further deregulation. This stated aim of the government is simply a pandering to special-interest groups that are convinced that driving workers' wages down and weakening employment standards will be a boon to economy activity.

Our members produce a lot of the goods and services that are the basis of the Toronto economy, and we are also the consumers whose spending patterns are an important dynamic of the economy. We reject the idea that attacking workers' employment and living standards will increase the capacity of our economy to generate social wealth that the community at large will benefit from. Bill 49 is part and parcel of misguided and ideological politics presented in the guise of legislative improvements.

We'd like to start off by talking about the rhetoric and the reality. On May 13, 1996, this bill was introduced by the labour minister, Ms Witmer, who made three promises concerning this bill. She stated that this bill (1) would eliminate years of accumulated red tape, (2) encourage the workplace parties to be more self-reliant in resolving disputes and (3) help the most vulnerable workers.

First, we don't believe that Bill 49 is a good example of legislation intended to eliminate red tape. The bill actually establishes more restrictive time limits for workers to be able to make claims for moneys they are

owed by their employers. It also sets limits for the amount of money a worker can make a claim for, thus eliminating the opportunity to receive the full amount that is owing. It limits the flexibility of workers in making claims by stipulating the sole course of action that a worker may take to pursue a claim.

The minister's promised streamlining of the Employment Standards Act within the amendments of Bill 49 is simply a transfer of the burden and cost of the enforcement of a provincial statute from the Ministry of Labour on to the shoulders of individual workers and local unions. Is this not, in the words of backbenchers, the establishing of a deadbeat ministry that is absconding from its responsibility and passing it on to the shoulders of others?

We would suggest other remedies if the sincere intention is to eliminate the red tape, streamline the delivery of employment standards and increase compliance. A massive public education campaign on the Employment Standards Act that would educate each employer as to their responsibilities and each employee as to their rights would be a more efficient and cost-effective means of achieving this goal. It should be mandatory for the Employment Standards Act to be posted in every workplace in Ontario.

In conjunction with the public marketing campaign of the Employment Standards Act, a significant increase in the number of industrial audits by employment standards officers would also greatly increase the effective compliance with the Employment Standards Act. Increasing the amount of fines that would be levied for repeat offenders and publicizing the prosecution of violators would also greatly assist with the ability of the ministry to do its job. I'd also suggest that you have a number of creative minds within the ministry. Maybe you could establish a boot camp for bad bosses.

The ESA contains a long list of bureaucratic rules and regulations so that many workers are not even covered by significant sections of the act. For example, landscape gardeners are excluded from the provisions on statutory holidays, overtime and hours of work. This is similarly the case for teachers, domestic workers and building superintendents. The elimination of the red tape, restrictions and barriers that exist for many workers would be a good example of a sincere commitment to the streamlining of the ESA, which is not included in Bill 49.

1120

The minister's second promise was to encourage self-reliance in the resolution of workplace disputes. These are simply code words for the abdication of responsibility. The government has already eliminated close to one third of the employment standards officers and dropped the use of legal aid funds to be used in employment law disputes. The workplace, contrary to what a number of you believe, is not a level playing field where employers and employees have equal power and equal rights. To ensure a fair and equitable workplace, we call on the government to increase the number of employment standards officers, provide more legal aid funding for employment law disputes and provide more resources for workers to assist in the settling of disputes between workers and their employers.

This legislation also does not provide any reprisal protection for workers when they make a claim against their employer and as a result they are fired. Study after study has shown that well over 90% of claims to the employment practices branch of the Ministry of Labour are made by workers no longer in the employ of the employer the claim is made against. It's difficult to consider the Employment Standards Act provisions as legislative rights when workers are not protected for exercising these rights. The Employment Standards Act must include provisions that will protect workers to be able to make just claims without fear of losing their jobs. Bill 49 does not include any provision for this.

The third promise was that Bill 49 would help the most vulnerable workers. Part-time work is some of the only work available in this province; one third of part-time workers these days are only working there because full-time jobs are not available. In 1995 there were 350,000 part-time workers in the greater Toronto area. This growing segment has few applicable provisions contained in the Employment Standards Act. For example, part-time workers who work less than 12 shifts a month are excluded from statutory holiday pay provisions in the ESA. Part-time workers are not granted the same or even prorated benefits that full-time workers receive. Bill 49 does not look to make any improvements in this regard.

In terms of actual amendments that were made under the bill in terms of the enforcement of violations, Bill 49 places the responsibility for the enforcement of the Employment Standards Act on to the individual worker and the union. Unionized workers currently are able to make claims to the employment practices branch for violations by their employers. The Employment Standards Act establishes the conditions of employment for many unionized workers for provisions that are not otherwise clarified or improved upon in their collective agreement. More commonly in the case of workplace closures, unionized employees utilize the enforcement measures of the ESA in accessing their entitlements to severance and termination pay.

Bill 49 proposes that unions now utilize the grievance procedure under their collective agreement to enforce these legal rights. The union will now bear the responsibility and actual costs of the enforcement of these rights. This change will also now give arbitrators the jurisdiction to make rulings that were previously under the auspices of employment standards officers. The ability of arbitrators to do a reasonable job without the investigative capacity, resources or experience of employment standards officers will curtail and limit the ability of arbitrators to do a fair and equitable job.

Bill 49 also restricts the options non-unionized workers have to enforce their employment standards rights. Workers owed money who wish to seek recourse will have to choose between pursuing their claim under the Employment Standards Act or taking their employer to civil court. They will only have two weeks after they have initiated the claim to make this choice.

As mentioned earlier, this situation is exacerbated by the cuts this government has made to the Ontario legal aid plan and by the elimination of employment standards officers. In forcing workers to choose a restrictive route

to seek redress, the ministry is simply reducing its own responsibilities and passing the onus on to individual workers.

The time limit is extremely restrictive as well. Will workers be provided with the appropriate information as to their best options when they pursue a claim? With all this talk you are making in this and in other statutes you are looking at, you are saying self-regulation is the route to go. But we're also going to ask you is, in an example that may strike a chord, are you suggesting now that if on my street there are speeders or repeat people going through Stop signs, I'm the one to take a driver like that to court, as opposed to a police officer? Employment standards officers are there to provide a purpose and a function in terms of looking at standards for all Ontario residents. It should not be up to individual workers or the local unions to have that responsibility.

In relationship to limitation periods, Bill 49 places further restrictions on workers' ability to receive justice by stipulating that workers will only have six months to make a claim for moneys owed to them instead of the current period of two years. In this economic climate, it is our experience that many workers are forced to stay with jobs where they are not being compensated fairly because they would rather have half a wage instead of no wage at all. A worker cannot afford to walk away from a job when the employer is breaking the law, as there are few other jobs available.

Many workers keep detailed accounts of unpaid wages and unpaid overtime compensation and then file a claim for the entire amount owing when they are successful in landing another job or when they finally decide that they cannot afford to take this any longer. Instead of assisting workers who are forced to work in this manner, Bill 49 penalizes workers and establishes new red tape that restricts workers' ability to collect the money that is owed to them.

On the other hand, Bill 49 has not shortened the ministry's own time limits to be able to force employers to pay debts owed to employees sooner. From the date that a claim is filed, the ministry still has two years to investigate and an additional two years to get the employer to pay the moneys that are assessed to be owing. A sincere attempt to streamline this process would have shortened the investigation and prosecution time limits, not the claim limitation periods.

Bill 49 sets a maximum limit of \$10,000 that a worker can claim, and the minister has indicated that a minimum limit will be established as well. This is outrageous. Bill 49 rewards the worst offenders of the Employment Standards Act in terms of those employers that owe workers over the limit. A worker has the option of pursuing an employer through the civil courts for amounts greater than \$10,000, but again this puts the onus on the individual worker.

The proposed establishment of a minimum limit is ludicrous as well. Most workers just discover, when they are on the job on the first day or during the first hour, that the employer who has made expansive promises of high wages to them in the job interview has no intention of delivering. Are they to be penalized for making a claim for the moneys owed them regardless of the

amount? Bill 49 will send a message to workers that it's acceptable for an employer to lie in job interviews and that the Ministry of Labour will take no responsibility around this. It's no wonder that this bill has been dubbed both the Bad Boss Law and the Don't Pay a Cent Event, because what it is telling employers is basically: "You can get away from it. To be competitive, just break the law."

In one of the most controversial amendments of Bill 49, the Ministry of Labour proposes to make use of private collection agencies to process moneys assessed to be owed to workers. We believe that this is not going to address the issues and the interests of workers and we believe that a public collection agency will be more interested in going after the full amounts a worker is owed as opposed to cutting a deal so that the private collection agency can actually obtain its fee.

I think the onus is on the ministry itself to prove that the private sector will be more efficient. This isn't a question of ideology or whether we prefer public or private sector delivery; the question back to you is, what would be the most efficient system? A report of another ministry of the provincial government disputes the notion that the private sector is more efficient. The Globe and Mail reported on July 29, 1996, that a provincial government report indicated that public collection services have been more than twice as efficient at recovering moneys owed as private collection agencies have been. An Ontario Management Board document that reviewed collection agency effectiveness in October 1995 revealed that the provincial government's own collection agency recovered \$6.30 for every \$1 in expenditures, compared with only \$3 recovered by private collection agencies for every dollar spent.

Finally, we again call for the dropping of Bill 49. We suggest that you go back to the drawing-board and come back with an Employment Standards Act that would meet the needs of Ontario workers going into the new millennium, not one that's more in line with the last century. The Employment Standards Act needs to be modernized; it needs to be brought up to date. Ontario workers are the ones who produce the goods and services of our community and they are the consumers. They deserve a real employment standards law, and we expect this government to throw out this law and come back with real improvements to the Employment Standards Act.

The Chair: Thank you very much. We appreciate your taking the time to make a presentation before us today.

1130

OPSEU LESBIAN AND GAY ACTION COMMITTEE, REGION 5

The Chair: That takes us to our next presentation, the OPSEU Lesbian and Gay Action Committee, Region 5.

Ms Robin Gordon: My name is Robin Gordon. I work with the office of the worker adviser as a legislative interpretation officer. I'm a member of OPSEU Local 528 and I'm representing the OPSEU Lesbian and Gay Action Committee for Region 5. I believe you have a brief before you that I'm going to go through. Hopefully there will be a little time at the end for questions.

Labour Minister Elizabeth Witmer claims that Bill 49 will bring self-reliance, flexibility, efficiency and relevance to the regulation of minimum workplace standards in Ontario. In reality, this bill would not only reduce the rights workers have on the job, but also make it more complicated, costly and, in some cases, impossible to enforce what minimum standards remain. The provisions of this bill are particularly devastating to workers in sectors most open to employer abuses and corruption, where wages are low, benefits rarely exist, there is no security and employers routinely break labour laws to increase their competitive edge. The workers in these sectors are often women, immigrants, members of racial and ethnic minorities, and gays and lesbians.

The Ontario Public Service Employees Union Lesbian and Gay Action Committee of Region 5 exists to address the concerns of gay and lesbian workers, both within our own trade union and as trade unionists in the community at large. We are concerned with the ways in which historical discrimination and systemic disadvantage influence the treatment of gays and lesbians in our workplaces and in government legislation. We identify with other groups of particularly vulnerable employees, such as women, immigrants and members of racial and ethnic minorities. Many of us belong to more than one of these groups.

We approach the question of employment standards as union members representing our own concerns as members of both the public service, including the Ministry of Labour itself, and the private sector, including privatized services, and as advocates for gay and lesbian workers and, more broadly, vulnerable workers.

Statistics on gay and lesbian workers are difficult to find due to the historic problems of invisibility and a climate of hostility and the methodological problems of identification and definition. Our knowledge derives instead from our individual and collective experiences as members of the lesbian and gay community. From this, we know that gays and lesbians are overrepresented in many sectors in which workers are underpaid, over-worked, receive few benefits and have virtually no security. These are sectors in which violations of minimum standards are common — foodservice, retail, social services like health care and day care, and the sex trade industry, such as phone lines. These are industries in which members of visible minorities, including gays and lesbians of colour, are also often overrepresented.

In our brief, we highlight our most pressing concerns, though not all of our concerns, with Bill 49 regarding both unionized and unorganized workers.

Regarding unionized employees, the labour minister announced on the first day of these hearings that the government has decided to postpone the amendments in Bill 49 which would allow employers and unions to contract out of minimum standards on severance pay, overtime, public holidays, hours of work and vacation pay. We reiterate our opposition to these provisions — both now and in the future, given that we understand they will reappear — which has been voiced at these hearings by OPSEU, the Ontario Federation of Labour, other unions, labour councils and community groups.

For the government, this provision represents flexibility. For employers, it represents an opportunity to reduce labour costs. For unions, it represents a blow to fair, efficient and productive collective bargaining.

The principle of minimum standards is to establish a basic level of legal protection which workers are entitled to. By establishing a floor of rights, the Employment Standards Act helps to protect workers from an unlimited downward pressure on wages and benefits. Without this floor, employers' efforts to increase profits or gain a competitive edge may focus on taking advantage of a difficult economy, and the most vulnerable workers within that economy, to get workers to agree to increasingly exploitive conditions.

The requirement that the total package bargained between the parties, where they agree to terms lower than the minimum standards, must "confer greater rights" provides us with little comfort. There is no guidance as to what the standard of greater rights is, and it seems extremely likely that whatever is agreed to in a collective agreement will be presumed to be of greater benefit because it's the product of bargaining. We have little hope that adjudicators would be able to recognize the vast inequality of bargaining power that exists between employers and employees, particularly where the bargaining units are small or newly organized.

Even where unions are able to resist employers' proposals for terms lower than the minimum standards, precious bargaining power will be wasted on maintaining rights that were once guaranteed. Unions' ability to push for other benefits, such as job security, sick leave, health insurance, same-sex spousal benefits and anti-discrimination and harassment policies will be severely undermined. By increasing the number of issues on the table, this amendment would burden unions and widen the power gap between organized workers and their employers.

As union members, we are also strongly opposed to the provisions of Bill 49 which remove the rights of unionized workers to pursue employment standards complaints through the Ministry of Labour. The requirement that unionized workers grieve over violations of the act rather than make a complaint with the employment standards branch is unjust, discriminatory and can be understood as part of this government's financial attack on unions. There is no justification for this amendment other than to cut government costs by requiring victims to bear the cost of investigating and prosecuting employers who break the law.

It is the responsibility of the government to police and enforce the laws it enacts to protect its citizens. We do not require the victim of a theft to pay for the investigation of the crime, hire a prosecutor or pay the cost of a trial. A violation of the Employment Standards Act is essentially no more or less than a theft of money legally owed to a worker by an employer. That is why, in the past, the government has established and funded the employment standards branch to investigate and prosecute employers who steal from their employees in this way. Now the government proposes that unionized employees be denied access to this publicly funded system.

Unionized employees bargain a contract with their employer which includes a private dispute settlement

mechanism; that is, the right to grieve a breach of the agreement. The cost of a grievance is borne by both parties. Each retains its own representative or lawyer, conducts its own investigation and pays for half the cost of the arbitrator or panel of arbitration. By requiring unionized workers to grieve violations of the Employment Standards Act rather than making a complaint, this bill shifts part of the cost of prosecuting employers who break the law on to the victim.

This is much the same thing as is happening with regard to human rights complaints. Human rights complaints by unionized workers against their employers are now routinely dismissed under section 34 of the Ontario Human Rights Code on the basis that those workers could bring a grievance against their employer on the same issue. Unionized workers are denied access to the government-funded enforcement of the law and instead must pay the cost themselves, through union dues, of prosecuting employers. The parties may also be disadvantaged by being denied the investigative aspect of the ministry's procedures and the greater expertise of specialized adjudicators.

Unions do not have access, as some may believe, to an endless source of funding. We are financed through the dues of members. Particularly small unions, or small bargaining units within unions, and newly organized units, often in sectors with low wages, such as foodservice and retail, struggle to provide the services that their members need with the minimal resources available to them. Shifting the costly obligations of prosecuting exploitive employers for human rights abuses and employment standards violations from the government to unions is a direct attack on unions and their members. Workers who gain the right to grieve these issues through organization into unions should not be denied the right to use the specialized government-funded enforcement procedures if they choose. All workers in Ontario must have equal access to justice.

With regard to unorganized workers, particularly those in the foodservice, retail, social service and sex trade industries, we have two major concerns with the amendments in Bill 49: Minimum and maximum caps, and the six-month time limit.

Bill 49 would establish a maximum of \$10,000 on a claim pursued through the employment standards branch and give the minister the power to set a minimum through regulation. What possible justification can there be for denying workers the right to recover the full amount owed to them by an employer who has broken the law? Any worker who is owed over \$10,000 by their employer is, by definition, one of the most exploited and abused workers in the province. Unfortunately, it is often the most vulnerable workers who have the largest claims — domestic workers, telemarketers and food-service workers. Only the worst employer engaged in the most heinous and flagrant violation of minimum standards in the exploitation of their employees would be assessed as owing more than \$10,000. So what does this bill propose we do to these worst and most abusive employers? We arbitrarily limit their liability. They are forgiven any amount over \$10,000 which they have stolen from the labour of their workers. There can be no sufficient policy rationale for this.

1140

The government proposes that workers owed over the \$10,000 cap can pursue the total amount owing through a civil action against their employer. But this is not a real substitute, as you've heard before. Imagine a woman who works in a small telemarketing operation. Somehow she is owed more than \$10,000 by her employer, who has perhaps paid her less than the minimum wage, nothing for overtime or public holidays, and finally laid her off with no notice. She approaches the employment standards branch. She might not even know how much she is owed, but within two weeks she must elect to withdraw her complaint and launch a lawsuit or forfeit any money over the maximum which is owed to her.

Suppose she does elect the way of the courts. To recover anything over \$6,000, she must make her claim in General Division, which means she is required by law to have a lawyer. There is no legal aid available to her for this kind of case. If, miraculously, she finds a lawyer who will take the case on a delayed payment basis, she could wait up to six years for a judgement. After all of that, if her employer has bankrupted or disappeared, she has nothing, not even access to the meagre \$2,000 she could get from the wage protection fund. All she has is a lawyer's bill.

The introduction of a maximum amount recoverable will provide no administrative or cost benefit to the government. The ministry itself has said that claims over \$10,000 represent only about 4% of the total. In most of these cases workers would, for very understandable reasons, still lay a complaint with the ministry and forfeit the extra amount. This policy will not result in fewer complaints, and a complaint is just as expensive to investigate and prosecute with or without a cap on damages. The only benefit here is to the employer who has committed the greatest violations of the law.

On the opposite end of the scale, Bill 49 empowers the minister to set a minimum amount for claims. We've heard \$100 thrown around. Unfortunately, and to my surprise today, we heard \$250 proposed. If either of these were the amount, any worker owed less than that would be denied the right to recover the money owed to them legally by their employer. The government has indicated that workers owed less than the minimum can sue in Small Claims Court. This is not a real substitute. However, it costs \$70 to file a claim against a single defendant in Small Claims Court. This is not a real substitute.

What is the rationale for establishing a minimum amount which a worker can recover under the ESA? Perhaps the government feels that anything less than \$100 or \$250 is a trivial amount. It may be to someone with a secure job with decent wages and a respectable employer, but for a part-time waiter, a minimum-wage store clerk or a phone-line worker it is a lot of money, money they have earned and are legally entitled to.

By denying workers with small claims the right to bring a complaint, the government would likely save some administrative cost. But those savings are at the expense of workers' rights. An employer who breaks the law but owes no more than the minimum within the limitation period is merely allowed to continue with no penalty at all. But in our criminal law system, charges are

routinely brought against individuals who shoplift items of as little value as \$5 or \$10. Why should employers be allowed to break the law, stealing from their employees up to \$100 with immunity? In order for minimum standards to be a reality, the government must prosecute all violations of the law and not give a free pass to employers who commit supposedly minor violations.

The final issue we wish to highlight is our opposition to the reduction of the time limit for bringing an employment standards complaint from two years to six months. In this economy of high unemployment, people are desperate to hold on to any job they find. Employers know that almost anyone can be replaced with minimal effort. This is particularly true in industries where no specialized training is required. We're talking about low-paying, insecure, often part-time or casual jobs. If you bring a complaint, you're likely to lose your job. While there is an anti-reprisal provision, it's not effectively enforced, which is why workers wait until they have another job. Workers need a fair limitation period. Once a worker leaves an employer, they should be able to claim money owed to them back at least as far as two years.

The government has suggested that its rationale is that employers may not have records sufficiently far back or it may be a nuisance for them to prosecute these claims, but under subsection 11(1) of the Employment Standards Act employers are required to keep a record of wages and vacation pay for five years after the work is performed and must keep even more detailed records for at least two years after the work is performed. An employer who is following the requirements of the law will be able to provide records in their own defence.

If any change is to be made to shorten the length of time it takes to hold a hearing under the act, perhaps we should be concerned with the two years the ministry may take to investigate the complaint. Efficiencies should be found within the practices of the ministry, not at the expense of workers' rights.

In conclusion, we'd like to reiterate our support for the submissions which have already been made to this committee by the Ontario Federation of Labour and the Ontario Public Service Employees Union. We hope this committee will take seriously all the concerns which have been voiced by unions and community organizations on behalf of the diverse workforce of this province.

The Chair: Thank you very much, at exactly 15 minutes.

Ms Gordon: Well, there you go.

The Chair: You're to be applauded for having the best timing yet so far today. Thank you very much for taking the time to make a presentation before us.

519 CHURCH STREET COMMUNITY CENTRE

The Chair: That takes us to our next group, the 519 Church Street Community Centre.

Ms Alison Kemper: Actually, I'm not a group. I'm just a whiny small employer.

The Chair: Good morning anyway, and welcome to the committee.

Ms Kemper: Thank you. I'm going to be very brief because there's not a lot to say, but I'm certainly speak-

ing as a manager in this and not from the perspective of the most recent deputations. I'm here to speak to you as the chief manager of a busy unionized workplace. We have about 30 staff who belong to CUPE 2998. We negotiate collective agreements in biennial cycles. Most of the time, the negotiations are extremely straightforward and uncomplicated. We are able to hire a single negotiator at a reasonable cost and spend a couple of days reaching renewed agreements. The process is not onerous because we have a focused agenda.

When additional considerations are added to our agenda, the negotiations become much more time-consuming and costly. We cannot engage in the business of running a community centre while we are bargaining from scratch about new matters.

If the Employment Standards Act is amended to make statutory holidays a point of negotiation, it will be a nightmare. I run a centre which is open almost every day except stat holidays. If I needed to negotiate with a union determined to end equivalent days and to redefine them as generously as possible, I would need vastly increased bargaining hours and support. For obvious reasons, this is not at all attractive to me.

Such a proposal would become a full employment program for labour lawyers. I urge you to forget this proposal was ever made. Its implementation could be nightmarish for small employers. Thank you.

The Chair: Thank you very much. You've left us lots of time for questions, if you're so inclined. In fact, we'll say four minutes per caucus. This time the questioning will commence with the official opposition.

Mr Hoy: Good morning. I'm pleased to hear your presentation on a staff situation which is small by comparison to other large unionized workplaces. Thirty people work there, as you say. We've had many submissions say that workplace harmony is going to be eroded by this bill and there are going to be frictions and tensions and difficulty in negotiating certain aspects if this bill is passed. You have stated that clearly in the third paragraph, and in that that is your main thrust here, we appreciate your comments.

Ms Kemper: There won't be additional problems in workplaces if people get it all worked out on the bargaining table, but the bargaining table is a very expensive way to get things worked out. It costs lots of staff time and lots of consultants' time and lawyers' time and all that sort of thing. We could get it right, but it would be so expensive to add up this hour and this double time and, you know, "Are we open for this program?" It's just inconceivable to me that we could do that in the relatively inexpensive, quick time frame that we have been doing.

So we have two options. One is to spend a lot of money and work it out so everybody can see it's fair, or the other is to do it fast and have it a source of friction. I'd rather just say, "Take Boxing Day off because that's the law," and that's really easy and cheap and simple.

Mr Christopherson: I'll be as brief as the presenter. I think it's a different point of view that adds credibility to the argument that this is not something that people want in this province in terms of taking these standards and making them something that can be negotiated. I

think you've added an important element to that debate and I thank you very much for being here today.

Ms Kemper: You're welcome.

1150

Mr Tascona: Thank you for your presentation. I take it you are familiar with what's in your collective agreement?

Ms Kemper: There are always nuances. I'm fairly familiar.

Mr Tascona: But you have an understanding of what's in it.

Ms Kemper: Yes.

Mr Tascona: I think that your collective agreement probably would cover all the standards that are in the Employment Standards Act.

Ms Kemper: It refers to the Employment Standards Act.

Mr Tascona: It actually has a provision referring to the Employment Standards Act?

Ms Kemper: Yes, and the Human Rights Code and that sort of thing. It says, "Nothing in this agreement goes against the statutes of the province of Ontario," including ESA and OHRC.

Mr Tascona: And does it have the health and safety act referred to there too?

Ms Kemper: I think it's the legislation of the province. I'm not sure if it refers specifically to the health and safety standards.

Mr Tascona: So your grievance procedure covers all matters in the collective agreement.

Mr Kemper: In the collective agreement only. If you have a human rights complaint, you can take it to the Human Rights Commission or you can use an internal process that is not part of the collective agreement to deal with harassment or whatever.

Mr Tascona: But if there's a grievance dealing with harassment, it's covered under the grievance procedure.

Ms Kemper: There are anti-harassment provisions in the agreement, as well as in the Human Rights Code, as well as in the policies.

Mr Tascona: I would take it your grievance procedure works fairly well.

Ms Kemper: Yes.

Mr Tascona: Have you had many arbitrations during the year?

Ms Kemper: I've had one in four and a half years.

Mr O'Toole: Thank you for your presentation. As everyone has said, it's an interesting proposal. You're the manager in a very small workplace which happens to be unionized. You make agreements in your workplace in partnership with the people who work there.

Ms Kemper: Yes. It's pretty face-to-face.

Mr O'Toole: It's pretty face-to-face and it sounds like it's fairly functional. You may not have all the same provisions and rights and entitlements as a larger OPSEU local, right? The rate of pay and various things might be different than larger, more organized workplaces, would you say? Or do they bring to the table preconceived standards, like community centre people get \$12.15 an hour or whatever it is?

Ms Kemper: One of the ways that we save on the cost of this is that CUPE 79 and 43, which just ratified last

weekend, are city of Toronto locals and we are a city of Toronto agency, so the city says, "We did that already with CUPE." So anything around cost that's in those agreements we can basically know that the city is starting from that.

Mr O'Toole: That's called ratchet negotiation, when you take on the —

Ms Kemper: Well, the city ratchets, you know. It's an employer-based ratchet.

Mr O'Toole: I guess that's a good point. I think it's important to the workplace itself. For example, don't you think it's important for you and the people who work in your — you're an employee as well.

Ms Kemper: Yes. I'm excluded from any bargaining.

Mr O'Toole: I know you don't have any rights or entitlements; it's all performance-based. But I guess the point I'm trying to make is this: I fundamentally believe that the place to make the decisions about whether or not your community centre is open on statutory holidays — I don't think you need the Big Brother province telling you that in Kemptville or in Bowmanville or in Toronto, "Thou shalt do these things." I think what you need to do is make the decisions appropriate to the community and the workplace that you're serving in. Would you agree that's the way it should be idealistically, as opposed to the province saying, "These shalt not be statutory days?"

Ms Kemper: What we do now, which works pretty well, is we know what it will cost to open on whatever statutory holiday and we know which ones it's worth it to us to remain open on and which ones it's not. But to spend two weeks of my life every two years totting it up to determine which new ones or which auxiliary ones or which substitution, it just wouldn't work at all for me.

Mr O'Toole: I'll give you an example. What if a competitor came into your community from a non-unionized sector to offer a swimming program and perhaps other kinds of fitness or whatever activities you do at your community centre, for a somewhat more reasonable rate and more flexible hours? In a world of competition, that's really what we're talking about in this. We're saying that your decision is to either save the jobs by working with the employees and the managers or to be locked into a framework that gives you no flexibility to say, "Well, Mary Kay's Gymnasium just opened and we can't compete."

Mr Christopherson: You really are a lunatic, aren't you?

Mr O'Toole: That's because you don't understand the reality. You're so locked into a mindset, Dave, that you've stopped thinking.

The Chair: Order.

Ms Kemper: Mr Chair, shall I answer the member?

Mr O'Toole: You're not thinking, Dave. That's a very bad sign.

The Chair: Please. Ms Kemper.

Mr O'Toole: He doesn't think. That's the problem.

The Chair: Mr O'Toole, please let Ms Kemper answer.

Ms Kemper: As I understand it, this proposal won't reduce my costs, because I have to bargain an equivalent. As I understand it, I am certainly able to open on any statutory holiday I choose now, and I make a decision

about whether it's worth it to provide a meal to the homeless on Christmas or Boxing Day at double time and a half or whether I want to do it on the Saturday after at straight time. Those are my decisions to make. I'm going to have the same costs, because you can be sure that CUPE's going to keep me to an equitable tit for tat on that. The issue for me is the enormous costs of measuring what's equitable. That's just, as I said, a full employment program for labour lawyers.

Mr O'Toole: I hear your argument.

The Chair: Thank you, Ms Kemper, for taking the time to appear before us and make a presentation this morning. We appreciate it.

Before the committee rises, there is one brief procedural matter. Apparently in Belleville on Monday you had two requests for speaking time at the last minute that you dealt with unanimously. We have a similar request today. The Committee on Monetary and Economic Reform would like to send a speaker, and we have a break. I would propose the break at 2:15 where we've had a cancellation would be the most likely slot. I would ask for any comments or whether it's the unanimous decision of the committee to allow them. Okay? Thank you. The clerk will take the appropriate steps.

With that, the committee is recessed till 1 o'clock.

The committee recessed from 1157 to 1301.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 525

PARKDALE WORKERS WITHOUT WAGES

The Chair: Our first group this afternoon is OPSEU Local 525. I invite them to come forward to the table. Good afternoon and welcome to the committee. Just a reminder that we have 15 minutes for you to divide as you see fit between either presentation time or question and answer.

Mr Bart Posiat: We'll do the best we can, Mr Chair. I'd like to introduce somebody we have brought with us from a community group, the Parkdale grass-roots organization of unemployed workers. Her name is Marjorie Frutos and she will represent the Parkdale Workers Without Wages, which is a catchy name for unemployed workers. We'll both do the submission.

Ontario Public Service Employees Union, Local 525, is the front-line local of community legal workers, as well as administrative assistants, who work in Metro Toronto legal clinics, and we also represent the administrative staff at the Ontario legal aid plan. Our local appreciates the opportunity to speak to the committee today. We also want to introduce the grass-roots community organization Parkdale Workers Without Wages.

We are the workers who work with and represent non-union workers in social assistance and welfare, tenant rights, immigration and work-related matters. We are the workers who see the real impact of the present government's agenda. We are the ones who see the impact, for instance, of the 21% cutback in welfare rates. We are the ones who see the impact of the economic evictions that happen as a result of that. We also work with an increasing homeless population on the streets of the city of

Toronto. We will also see the impact of the proposed changes in Bill 49, if they happen.

We're often expected to pick up the pieces of the government's devastating changes and we are the front-line workers who often receive the anger and frustration of the single mother whose welfare cheque has been cut back and who has tried to work, only to end up in a job scam and not be paid. These things happen every day. Our daily jobs involve ensuring that the most vulnerable workers have some rights in their jobs when they lose their jobs and are forced to go on welfare, and in their homes.

Ms Marjorie Frutos: Parkdale Workers Without Wages is a group concerned with issues of unemployment and poverty arising from unemployment. We know that unemployment is a problem not because people don't want to work, but because there simply aren't enough jobs. We believe it is important for the committee to hear from us.

In Parkdale there is very high unemployment, estimated to be at 60%. We know that when people try to get a job, an employer is more than willing to exploit someone, knowing there are many in the unemployment lineups. We know the Harris government calls Bill 49 mere housekeeping. We think the government is wrong. The Employment Standards Act is a critical cornerstone of workers' rights in Ontario. The ESA sets the minimum floor for workers' basic rights in Ontario. In today's high unemployment economy, the Employment Standards Act has become even more important. Bill 49 is an attack on workers' basic rights, both union and non-union workers. Bill 49 should be withdrawn.

Mr Posiat: We'll dwell briefly on the changes introduced in Bill 49. The Bill 49 proposal to contract out rights would enable employers to approach us for a longer work week, to work on public holidays and to develop an alternative severance package. We understand that the ministry removed this section from being reviewed at the upcoming review of the Employment Standards Act, but we want to mention it because our recommendation is that the government not even consider such a proposal. This proposal would have an impact on non-union workers. A non-union employer will follow the same standards used by a union employer. A non-union employer in the same sector as a union workplace, where for instance a 56-hour workweek is used, will be forced to compete with the 56-hour workweek. No non-union employer will turn down an opportunity to extend the workweek.

Bill 49 also introduces other changes such as the new limitation periods for complaining. Workers will have only six months to make a claim against an employer, and that's a change from the current two-year period. In periods of high unemployment, workers need a two-year period to complain. Many workers endure great hardship just to have a job, any job. If a worker wants to launch a complaint against an employer, they know they will lose their job. There's no protection from a boss's reprisal. Bill 49 further pushes the workers to choose between their rights and their job. We strongly recommend that the government remove this section of Bill 49 and reinstate a two-year complaint period.

We support a call for new mechanisms to protect workers from employer reprisals. That is what is necessary. We would support a call for something like an Operation Spotcheck, where 10% of employers are to be investigated in the next year.

Ms Frutos: The overall changes to the Employment Standards Act — the shorter investigation period: The Bill 49 proposal states that investigations will scan back only six months of a worker's history at the workplace, shortening it from two years. Employers may have been violating a worker's rights for years, but under Bill 49 they will be accountable for only six months of violations. Our demand is to reinstate the old investigation period of two years.

The new \$10,000 cap on claims: A worker owed more than \$10,000 because an employer has violated the act and literally stolen money from the worker will not have access to wages and money they are owed. Our demand is to remove this cap from Bill 49.

A new, unannounced minimum claim: Workers who work for an employer for a few days or a few weeks and are owed wages will be denied access to an investigation and to the money they are owed. This opens the door for employers to hire workers for a few days and violate employment standards with no penalty. With high unemployment, many employers hire a worker for a few days, try them out, then fire them, often for no wages. Other workers are being told to come and be trained for a few days for free. We want this proposal dropped so that workers will be entitled to their wages and no employer will be able to get away without paying a worker what they are owed.

1310

Access to justice is denied for low-income workers. Bill 49 changes the administration of the act so workers will be told at the start of the investigation to use either the Ministry of Labour or go to court. They will have to make this decision at the beginning, often without knowing which option would be better for them. Low-income workers cannot get legal aid for taking employment law cases to court. We want this proposal dropped so that workers have access to a full range of services from the Ministry of Labour.

The private collection agencies: While the Ministry of Labour is notoriously weak at collecting moneys owed to workers from an employer, there is no guarantee that contracting out collections to a private agency will improve the situation. Most critical is that private collection agencies will have the power to encourage settlements between workers and their employers. Workers will lose as collection agencies will push for a quick settlement and quicker payments of their own accounts.

Mr Posiat: In conclusion, what we are asking for is to improve this law so that men and women will have access to real rights. We're asking for basic rights such as coffee breaks, the right to a living wage, the right to sick leave, the right to a minimum wage for all workers in all jobs, the right to just cause or the employer needing a reason to fire a worker added to the Employment Standards Act.

Above all, we're asking for better enforcement. Enforcement is a real problem. It's already a problem

under the act. Now it will be even worse if these changes go into effect. When a worker finally comes forward to launch a complaint, the Ministry of Labour offers no protection to the worker against being fired for trying to enforce the law. Workers don't get reinstated in their old jobs. As a result, 90% of workers complain when they have left the job they want to complain about.

Workers know the choice they face. If they complain about the fact their rights are violated, they will lose their job. The current employment standards system forces a worker to choose between their rights or a job. To make matters worse, as a result of the government's changes to welfare, if a worker quits because of his or her job, they must wait three months before receiving any support. A worker is left with nothing.

The impact of both Bill 49 and welfare changes means workers are pushed more and more into jobs where they are mere chattel with no rights. We see Bill 49 as a serious attack on workers. We urge you to repeal Bill 49. We want jobs with rights.

The Chair: Thank you very much. That leaves us just under a minute and a half per caucus for questions. The questioning this round will commence with the third party.

Mr Christopherson: Thank you very much for your presentation. I noted early on you said that the government's aware there are many in the unemployed lineup and it reminds me of another presentation in a community where one of the presenters said that if you took all the policies of this government and took them in their totality, what we'll end up with in Ontario is a large pool of desperate unemployed workers. That I think is exactly the type of people who will be preyed upon by unscrupulous bad bosses.

We've heard others say that a lot of bad employers, bad bosses, will be emboldened by this government, feeling they have the sanction of the government at their back. How do you feel about that? Do you think there's a message from this government to unscrupulous employers that things are getting even easier for them?

Mr Posiat: Yes, we feel that certainly is the case, that the creation of an underemployed and underpaid industrial reserve will depress wages even more, and that in a situation where costs are high and rents are high such as in Toronto. Even now, in Parkdale it's a desperate community. In south Parkdale we have an unemployment rate of 60%. People will do anything. We know situations where people have worked as telemarketers for months without getting paid a penny. What are these people going to do? How are they going to pay for the food? How are they going to pay the rent?

I would also like to add that we're not offering any great economic expertise here, but you don't have to be a rocket scientist to know, in the long run, what this is going to do to the economy, to the retail sector at least. There are probably other sectors that want to level the playing field with Brazil and Mexico. Certainly, I've been in Brazil for a while, and I know what the situation is there: You have 10% of the population living in opulence, a very small middle class and the rest just don't earn anything at all.

But there's a strong retail sector in Canada which is bleeding, so one might well consider what that does to the buying power of the average consumer. Certainly, in Parkdale nobody is buying. You go to Queen Street West in Parkdale, and one store after another goes belly-up, people go bankrupt. Small businesses trying to eke out a living selling this or that, it isn't working. It's a very depressed thing. Parkdale is almost like a pilot project to see what happens in a high-unemployment economy where everything is being cut.

Mr O'Toole: Thank you for your presentation today. Also, we had a presentation yesterday from the workers without jobs group. It was a sensitive presentation. I don't think anyone on this committee would be supportive of abusive employers. That's been clear throughout the government's response and from the members here on both sides. Nobody here on this committee wants to tolerate abusive employers; that's clear. That's why we want to focus on collection and improving the climate. This legislation says that collection now becomes an important focus. We're not satisfied with 25 cents being collected on the dollar.

I just want to bring to your attention some positive news that I hope spills over to Parkdale. I'm reading a release from the Ministry of Finance. "Statistics Canada reports that Ontario job gains were broadly based across the economy. The unemployment rate fell to 8.5% in August from 9.2% in July, matching the largest monthly decline since 1984." I'm pleased that these signs are showing some signs of recovery.

The bill here is really to focus the resources of the ministry and this government on the most vulnerable. I sincerely believe that. I don't think there's any other agenda except to say that organized workplaces have a lot of collective agreements and a lot of resources and are quite competently able, with their leadership, to take care of many important issues in this changing world of work. But don't you agree that it's important to help the most vulnerable?

Ms Frutos: I disagree. This is not going to help the most vulnerable. I think our presentation just showed that the most vulnerable will be badly hurt by these amendments and by this act.

Mr O'Toole: By improving collections —

The Chair: I'm sorry, Mr O'Toole, but we're over our time already. Moving to the official opposition, Mr Lalonde.

Mr Lalonde: Good afternoon. You've just said that the people aren't working because there aren't any jobs. Do you think Bill 49 will help create jobs?

Mr Posiat: Sorry, could you repeat that?

Mr Lalonde: Will Bill 49 help create jobs if there aren't any jobs at the present time?

Mr Posiat: No, it won't. This is not a job creation measure. It simply unlevels the playing field even more. It might encourage some very marginal type of employment, where the opportunity for exploitation is great, but that does not really create any meaningful jobs. It might encourage some low-wage type of activity that has no meaning at all in the civilized society that we live in.

Mr Lalonde: I'm pretty sure you are concerned with one of the points in Bill 49. Those who are fortunate

enough to have a job and who want to lodge a complaint because of bad employers, workers will have only six months to make a claim for money owed to them, and the maximum is \$10,000. Do you think it's fair to the employees that we have a maximum of \$10,000?

Mr Posiat: Absolutely not. There are even claims from domestic workers that we know about — these are no secrets; we've read about this in the press — where the claims are much larger than \$10,000. A maximum of \$10,000 is absolutely nothing. People sometimes work for a very long time really because they have no choice, and then the claim is much larger. They will never be able to recover this.

Mr Lalonde: I fully agree with you that \$10,000 is not very high. When we say there are no jobs, 90% of the people do lodge a complaint after they have found themselves another job. They could be working for bad employers for a number of years before they are able to lodge a complaint. Six months is not long enough; probably two years was very long in the past, they were saying, but six months is not.

Mr Posiat: Six months is certainly not long enough.

The Chair: Thank you both for taking the time to make a presentation before us here today. We appreciate it.

Mr Posiat: Thank you very much for letting us speak.
1320

ALLIANCE OF SENIORS TO PROTECT CANADA'S SOCIAL PROGRAMS

The Chair: That takes us to our next group, the Alliance of Seniors to Protect Canada's Social Programs, if they could come forward, please. Good afternoon. Welcome to the committee. Just a reminder, we have 15 minutes. You can divide that as you see fit between a presentation or question-and-answer time.

Mr Joe Jordan: Mr Chairman, we are very pleased to approach this committee here today on Bill 49, the Employment Standards Improvement Act. We are the Alliance of Seniors to Protect Canada's Social Programs, with a submission by the Alliance of Seniors to the standing committee on resources development on Bill 49, the Employment Standards Improvement Act, 1996. I believe you all have copies of our submission.

On introduction, we as a retiree organization, namely, the Alliance of Seniors to Protect Canada's Social Programs, are a group of representatives from many retiree groups or organizations and are speaking on behalf of over 500,000 seniors. We are very concerned about what is happening to our beloved Canada.

We were shocked to read the article in the Saturday and Sunday Star on August 31 and September 1, 1996, entitled, "Race to the Bottom."

"Downward pressure on wages has put the squeeze on many Canadians over the last decade — most dramatically on those at the bottom end. Consider:

"The number of people in Ontario officially working at minimum wage has increased by 40% in the past five years. No one knows how many work for less but they're considered a significant part of the underground economy.

"Temporary employment firms have blossomed across the job spectrum, with many specializing in minimum-wage jobs. Of those, some ask few questions and pay in cash." I think we're all aware of that. "The vast majority of these workers have become permanent 'temps.'"

"The picture isn't always negative. Electronic technologies are revolutionizing a number of industries providing many, including those making the minimum, with new opportunities and the convenience of working at home.

"But in the garment trade, historically a barometer of the state of worker rights, 'home work' is raising concerns about new forms of exploitation."

"Home Sweat Home...Ontario's garment industry, hard-pressed by competition, now employs about 5,000 homeworkers, two thirds getting less than the minimum wage and many angry about it."

It is incredible that the government of Ontario should sit back and permit unscrupulous employers to get away with such practices, and the changes in the Employment Standards Act will permit the employer to further abuse the workers' rights.

We, the elders of Canada, remember the Depression of the 1930s, the widespread unemployment and poverty, the devastation of a serious illness, the ominous absence of economic security and the scandalous lack of care in all ages.

We supported legislation and paid the taxes to develop comprehensive and universal government programs which provided pensions, unemployment benefits, health care, affordable education and a welfare safety net. We made Canada a caring nation, recognized throughout the world for its justice and humanitarianism, and we see these social programs falsely blamed for Canada's debt and deficit.

In introducing Bill 49 in May 1996, Labour Minister Elizabeth Witmer claimed she was making housekeeping amendments to the Employment Standards Act. The Alliance of Seniors feels she is not merely doing housekeeping: she is wrecking the house and rebuilding it in favour of the employer.

Enforcement for non-unionized employees — whom we are very concerned about — sections 19 and 21, sections 64.3, 64.4 and subsection 65(1) of the act: With these amendments, the minister is proposing to end enforcement where they consider violation may be resolved in the courts. These amendments would put the responsibility for the enforcement of minimum standards for non-unionized workers on the worker. Simply put, the employees would be forced to choose between making a complaint to the employment standards branch or filing a civil suit in court, an expense the employee could possibly not afford.

Maximum claims, section 21, subsection 65(1) of the act: This amendment of a maximum amount of \$10,000 to be awarded to the employee, if indeed the employee could collect. In many cases, the claim would be in excess of \$10,000, taking into consideration wages and benefits such as vacations, statutory holidays, sick benefits, pensions etc. We just don't understand the reasoning in such an amendment. If a person is owed a certain amount of money, why, then, would the govern-

ment set a cap for a claim on that amount? It sounds dictatorial to us.

The use of private collectors, section 28, the new section 73 of the act: The proposal to privatize the collection function of the Ministry of Labour's employment practices branch. This would absolve the responsibility of the government to make sure the employer paid what the employee was awarded. This is an important change. It takes away the task which has traditionally been a public function. That has not worked well in the past. The most frequent reason for the ministry's failure to collect wages assessed against employers has been the employer's refusal to pay. This change is an attempt by the government to absolve itself of the responsibility to enforce the act by farming out the problem to a collection agency. In addition, the employment standards director can authorize the private collector to charge a fee to persons who owe money. This allows the collector incredible leeway with someone else's money.

In conclusion, we urge this committee to recommend against these proposals. As it used to say on our Ontario licence plates, "Keep Ontario Beautiful." But as we see it now, it's turning ugly. I thank the committee for its attention.

The Chair: That leaves us about a minute and a half per caucus for questions. This time, it will commence with the government benches.

Mr O'Toole: Thank you very much. I'm pleased to see the seniors taking a proactive stance. A lot of your comments were directed more at a federal attack on benefits to all Canadians.

In terms of this particular act, do you feel that, for instance, the one section on the six-month claim will speed up the process so that claimants will come forward more quickly, so that workers entering that same workplace won't be disadvantaged for two years?

Mr Jordan: When I look around this room, I see that there are a lot of people who will soon be seniors like myself.

However, in answer to your question, we believe that in fact there are many, many people, especially a lot of ethnic groups, who do not understand their rights under the Employment Standards Act. By the time they could possibly get to know their rights, if they do at any time — six months is certainly not long enough. At the present time, it's two years. By the time they're there two years, there's a possibility they'll have found out their rights and could exercise their rights, but six months is certainly not enough.

1330

Mr O'Toole: I think your group and other groups can make that point of educating the general population, outside of indeed their membership, of their rights and entitlements. I think that's a duty of the government as well, and these hearings, and part 2 will serve to educate the population of their rights.

Mr Jordan: Believe me, sir, we certainly try.

Mr Tony Michael: Maybe six months from after the claim has been put in, not six months for the claim to go in.

Mr Lalonde: Thank you for your presentation. When I look at the first page, you say the number of people in

Ontario officially working at minimum wage has increased by 40% in the last five years. This is really scary. It is scary for you people. It is going to be scary for all of us five years from now too, because there might not be any money there to pay for our pension plan. I notice also that it's really ever since the Liberal government has not been in power that the percentage of minimum has increased.

I really feel that the government should have kept in place the enforcement officers we have there. They will be releasing around 45 of those enforcement officers. With proper training, those people could render a lot of services to the vulnerable people. In this case, it's going to go to the collection agencies, the private sector, and I don't think the private sector is going to work for nothing. At the present time, a collection agency charges — the average is 33% of their collection, and when the maximum amount is \$10,000, do you feel that the employees who are owed money by the employers will be able to collect the \$10,000?

Mr Jordan: Sir, the unfortunate part about this is even a person who is collecting minimum wage, over a period of time, with benefits and all that could occur, severance pay and what have you — I plead with this gentleman here who mentioned the ethnic groups — there are many, many people who do not understand that the minimum wage is \$6.68 an hour.

Mr Lalonde: It's \$6.85 an hour.

Mr Jordan: Sorry, \$6.85. I got my figures crossed up.

A lot of these people don't understand that. In a recent survey, they found out that there were many of these ethnic groups who were actually working on home work for \$1 an hour, and this is absolutely something that's incredible to happen in Canada.

You may have noticed that — with my accent, you knew I wasn't born in Canada, but I came to Canada in 1953, and at that time, even in backward Ireland where I come from, they were working a 40-hour week, and if you worked more than 40 hours, you got paid overtime for it and you were guaranteed a minimum wage. When I came to Canada in 1953, you weren't paid overtime until you worked 48 hours. Then, eventually, it was brought down to 44.

The Chair: Excuse me, but we're going to run out of time, and I've got to allow Mr Christopherson time for his question.

Mr Christopherson: Thank you for your presentation. You should be aware, in the context of your referring to you and many of your members remembering the Depression years and what that meant particularly to working people and their families, that a lot of community and labour leaders have come before us and have acknowledged the contribution of the generations that came before them, their parents, grandparents and great-grandparents and what they fought for and how we got to have the great society that we do here in Canada.

I want to ask you how you feel about the government's audacity, quite frankly, in even attempting to call this bill An Act to improve the Employment Standards Act. You've already had one question from a government backbencher trying to get you somehow to agree that somehow this improves things, and that's what they've

actually called this bill. How do you feel about that and how do you feel about what this bill will do to working people?

Mr Jordan: We would not be here if we thought it was an improvement. We would certainly not be appearing before this committee if we thought it was an improvement, so doesn't that answer the question itself, the very fact that we are here, the very fact that we are not going to be union or non-union employees? We're finished with employment. We don't have to worry about that, but we are worrying about what's going to happen to Canada, and sincerely, we are pleading with you people not to allow these detrimental changes to happen. It's just something that's not of the Canadian nature, and as people on this panel, we say to you, please do not allow these changes to go through. I think that answers your question, sir.

Mr Christopherson: It sure does. Thank you very much.

Mr Michael: No, we do not believe this is an improvement at all, Mr Christopherson. We think it's a gutting of the employment standards, to even the minimal degree that's there now.

The Chair: Thank you both for taking the time to make a presentation before us here today. We appreciate it.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

The Chair: That leads us now to our next group, the United Brotherhood of Carpenters and Joiners of America. Good afternoon. Welcome to the committee. Again, the 15 minutes are yours to divide as you see fit.

Mr Daniel McCarthy: I'll begin by introducing myself. My name is Daniel McCarthy. I'm the Canadian director of research and special programs for the brotherhood of carpenters. On my left is Mr Ucal Powell who, in addition to being a vice-president of the Ontario provincial council, is also the business manager of our largest local here in Toronto, Local 27.

On behalf of the 18,000 members of the United Brotherhood of Carpenters and Joiners of America, the majority of whom are in construction, we welcome the opportunity to address our concerns to the standing committee. We have a brief that we have submitted to the committee. What we would like to do is highlight three points.

Under "Adjudication and Enforcement," on pages 4 to 6 of our presentation, which deals with sections 19 and 20 of the bill, the twofold effect of those sections is to divide workers into two groups on the basis of whether or not their workplace is subject to a collective agreement and to restrict access to a public institution, the employment standards branch. In the case of unionized workers, they are denied access to a public institution. To be blunt, section 20 of Bill 49 violates workers' fundamental freedom of association guaranteed under subsection 2(d) of the charter.

Section 20 is worded carefully to try and avoid infringing the charter. However, for all intents and purposes, a workplace with a collective agreement is a

virtual proxy for union membership. There is an adage in law and in common sense that one cannot attempt to do indirectly what one is prohibited from doing directly. Further, this is not about the recognition of a collective right under the charter. It is clearly distinguishable from the case law on subsection 2(d). It is about a coercive intrusion into an individual's exercise of freedom of association. It is about a categorization of workers and the denial of access to a public institution.

You are familiar in the press with the term "libel chill." This amounts to union chill. This is a direct statement to an individual, "Before you consider becoming a union member and moving on to a collective agreement, think about your access to a public institution, which will be taken away from you."

The second point I would like to make is on the limitations, the maximum and minimum claims, which are found at pages 7 to 9 of our presentation. This deals with sections 21 and 32 of the bill.

There is a perverse logic at work in the treatment of limitations, maximums and minimums. It seems to be: Too many workers are making claims under the Employment Standards Act because employers are breaking the law and not paying what they owe; too many workers are applying for public funds under the employee wage protection program because they cannot collect from employers; too many non-complying employers means too many employment standards officers are required for enforcement.

Therefore, the following proposals are introduced: maximum and minimum awards; retroactivity reduced to six months; restrictions on enforcement through the employment standards branch; and a reduction in employment standards officers by one third.

This is a contradiction, notably for a law-and-order government — punish the victim, not the perpetrator of the crime. This government has taken a very strong and a very public stand against deadbeat dads who do not pay what they owe, who do not live up to their responsibilities, who abandon their dependants on to the public purse. Why is this government unwilling to take an equally strong stand against deadbeat employers?

1340

In 1994-95, of the \$64.3 million assessed against deadbeat employers, \$47.8 million was not collected. The reason? Deadbeat employers refused to pay. Deadbeat employers should not be rewarded for non-compliance with the act. They should not be unjustly enriched at the expense of workers, and deadbeat employers should not be given a competitive advantage over the majority of employers who do comply with the act. Sadly, Bill 49 does not exhibit the same political will or enthusiasm in securing payments from deadbeat employers as the government has expressed in the pursuit of deadbeat dads.

The third point I would like to make is to do with the collectors, which covers sections 2 and 28 of the bill. In evaluating the proposed introduction of private collectors, it is instructive to look at the powers that are given and the powers that are withheld. Powers given include the power of the director of the employment standards branch. A collection agency can go to a third-party

employer, demand money owing to a party with the violation, an employer or director with the violation, not only demand collection of the money but can give the receipt for discharge of the original liability. I am not too sure I know too many employers out there that will be happy about a collection agency giving discharges of liability on a third-party proceeding.

They have the power of the administrator of the employee wage protection program. In other words, they can subrogate all the rights of an employee and bring an action against an employer. The collector also becomes a de facto employment standards officer. They can substitute a binding compromise or settlement and render void the order of the officer. Clearly, the collectors have adjudication and enforcement powers. They have both. It's not just collections; it's not just enforcement; it's adjudication.

So what are the powers that are being withheld? They have no power to demand information. They may void penalties as a part of a standards officer's decision or order, but they may not impose new ones, and it's interesting to note that if a penalty is collected, the subsection that deals with the disbursement of funds has no mention of collectors ever turning over the penalties.

This is somewhat alarming. This curious combination of powers given to and withheld from the collector who is an agent of the government — as an agent of employees chosen for employees by the government — raises important issues of selection, accountability and liability, and this is certainly exacerbated by the fact that the collectors will not be required to be registered under the Collection Agencies Act.

What will the selection criteria include? Will there be provisions for bonding? How will a collector be accountable to employees? There is no route for redress. If there is coercion in a settlement, the only option open for an employee is to sue the collector, and I suppose any lawyer would advise you to sue the government as well in Small Claims Court. And who pays in case of bankruptcy? It would appear to me that the sections of this act have not fully thought out what is going on with privatizing collection with the government being ultimately responsible.

We would submit in conclusion that section 3, the collective bargaining, to which I did not allude, section 73, the collector, should not even be submitted to a comprehensive review of the Employment Standards Act. The construction industry can ill afford legislation which makes it easier and more profitable to enter the underground economy. Workers cannot afford new barriers to collecting what they earned.

Denying unionized workforces access to a public institution is a violation of the charter and it sends a clear message to union members and to those contemplating union membership that there will be disadvantages. You will not have access, as a taxpayer, to what other taxpayers have access to.

Changes to the Employment Standards Act should penalize the problem deadbeat employers, not the victims. If the costs of public enforcement and collection are considered too high, the solution is to increase administration fees and penalties to the problem employers. The

solution is to find the political will and conviction being expressed against deadbeat dads.

One slight comment on the section which was withdrawn at the beginning of the hearings: There's a problem that individual standards within the Employment Standards Act are being lumped together as if they're interchangeable. They're not. They were gradually, historically evolved to address certain problems. A problem in health and safety which is created by long overtime hours or longer work hours cannot be compensated by an extra day off.

Mr Lalonde: Thank you for your presentation. The group that made a presentation from the same organization as yours yesterday stated that Bill 49 is also a sign that the government is intent on addressing the reality of the global marketplace, international competition and especially the changing nature of work in the workplace. Do you agree with this?

Mr McCarthy: I have read all the economic arguments and I know they've been made by several groups. This does not address changing globalization. It's simply saying, "If they can get away with it in the Third World, let's adopt it here." We have minimum standards in this country for a very important reason, and that is because we have expectations, I think very important expectations, and we have principles. I think it's unprincipled to say the only way we can compete is by the lowest common denominator and, "Let's look at the slums of Calcutta."

Mr Lalonde: You say you're representing a union group. Your people are unionized?

Mr McCarthy: That is correct.

Mr Lalonde: I've always said — and we have a maximum of \$10,000 — that the vulnerable are going to be the most affected. To my knowledge, if I do calculations it will be the ones who are unionized because they have higher salaries, and they are going to be the most penalized when it comes down to the limit of \$10,000. If you're at minimum salary, it takes a long time to add up to \$10,000. A minimum salary is only \$274 a week if you work a 40-hour week.

In this case your people are going to be the most penalized. Also, your group will not have a representative or an enforcement officer taking care of your employees. You will have to get hold of a lawyer or have an expert within your group to debate the case.

Mr McCarthy: You're right. I would add one refinement. Unions, and our union included because we also have industrial — we have a spectrum of wage ranges within union presentation. It's going to be the workers we take who normally earn just above minimum wage and we manage to bump them up a dollar or two over time and finally get them some kind of minimum benefits introduced who will be the most vulnerable. In any union structure, if you're trying to offload the costs of administration of a lower wage unit, then it becomes impossible to service them properly, and they should not be penalized for being in the lower wage spectrum of the unionized workforce.

1350

Mr Christopherson: Thank you for your presentation. We heard yesterday from the Council of Ontario Construction Associations that they believed this was good

for the industry, good for individual companies and good for construction workers. You say that this bill will damage the construction industry.

Just for the edification of the government backbenchers, wouldn't it make sense that if this bill did help the industry and companies and your members, you would either be here supporting it or, at the very least, staying away and being quiet for whatever reason? You certainly wouldn't come forward and do something that would deliberately hurt your members. Doesn't that make sense?

Mr McCarthy: It's precisely the reason we're here. It's of interest to note that in the construction industry the regulations in the back — we are already one industry where the 44-hour week has been waived. Sewer and water main is 50 hours, bridge building is 50 hours, roads is 55. If you're looking at an industry which is under attack because of changes to the employment insurance act, where we now have to say, how do we manage to produce good apprentices without training money coming from the federal government and how do we get greater utilization rights of our members, then it makes absolutely no sense to weaken the negotiation process and the minimum hours and the other minimum standards so that when a project is being done you can work astronomical hours at great personal risk and not enhance your future employability and not enhance your security.

Mr Baird: Thank you very much for your presentation today. I was particularly struck by your comment with respect to deadbeat employers. I think you're the second or third trade union who has brought that up and it's one that I agree with. Obviously the principal purpose of the Employment Standards Act and its enforcement is enforcing what we term to be some basic rights.

Your second comment that I think is very valid, and it's particularly noted that it came from a trade union, is something I've believed in for some time. If you're going to establish these rules that a business that is honest, pays the minimum wage, accepts all the responsibilities under the law shouldn't be at a competitive disadvantage from a deadbeat who chooses to pay their employee \$3 or \$4 an hour. That's something I wholeheartedly agree with.

One of the other issues you brought up was with respect to the collections branch, saying that the government is ultimately responsible. Under the legislation the government is, of course, ultimately responsible for the collection. Just to comment, it's our feeling that we're only collecting 25 cents on the dollar today: \$64 million worth of orders, and we're only collecting about \$16 million. We think we can do a better job than that. If there were some ways to do that in-house, certainly if we were to do it — the previous government would have done it over five years. Regrettably there's just not a pecuniary or personal interest there that I think the expertise a collection agency would have to bring to the task to deliver for workers. That's just a comment more than anything.

Mr McCarthy: In response to your first comment, you're absolutely right. The level playing field is critical, especially in construction, which is project-oriented and on competitive bids on tenders. It's absolutely critical that everybody knows what the baseline is.

With regard to your second point, in terms of enforcement: The point I tried to make in my presentation is that you're actually giving the collectors powers of enforcement without the requisite powers to execute them properly. It's one thing to say, "They've got an order; they've got to go out and collect it." But they can go out with an order, substitute an order and void the original one by up to 25% and it can be lowered later by reg. They can go out and subrogate an employee's claim and bring an action in court against an employer without having access to records. They don't have that power.

The fundamental flaw to collectors is not simply a privatization issue. It's that if you're going to lump together enforcement and collection in the collector, then call them an adjudicator and give them the powers of adjudication.

The Chair: Thank you both for making a presentation here today. We appreciate your coming in.

Mr McCarthy: Thank you.

COMMITTEE ON THE STATUS OF WOMEN, CITY OF TORONTO

The Chair: That leads us now to the Committee on the Status of Women, city of Toronto, if they could come forward. Good afternoon. Welcome to the committee.

Ms Pam McConnell: Thank you, Mr Chair. I'm Councillor Pam McConnell from the city of Toronto. With me are some staff members to our committee and some committee members, all of whom worked on our brief and our presentation. Kara Gillies is here from our committee; Catherine Leitch and Priscilla Cranley are staff to our committee.

Thank you for allowing us to make the presentation today. The city of Toronto's Committee on the Status of Women works cooperatively with city agencies and other levels of government to advocate and develop policies to achieve access and equity for women working and living in Toronto.

Bill 49, the Employment Standards Improvement Act, was introduced by Elizabeth Witmer, the Minister of Labour, to simplify administration of the Employment Standards Act. The Committee on the Status of Women strongly believes that Bill 49 goes well beyond this stated purpose and in particular that it will have a devastating impact on working women of Ontario.

The current employment standards legislation sets out minimum wages and working conditions for the majority of working people in Ontario. The standards have never been very generous, in our opinion. The role of the legislation has been to stop the worst forms of employment abuses and create a level playing field on which employers can compete.

Other than changes regarding vacation entitlement, seniority and service as they relate to pregnancy and parental leave, it is the view of our entire committee that the bill is regressive and erodes many safeguards that are contained in the current legislation.

Bill 49 denies access and equity of a significant number of working people who rely on Ontario's employment legislation for fairness in employment.

Bill 49 will allow employers to negotiate standards for hours of work, public holidays, overtime and severance pay that are lower than current minimum standards. This will lead to an unfair competitive advantage to employers who choose to deny fair and reasonable conditions of work to their employees. It will also have a disproportionate negative effect on the most vulnerable workers in our province.

Second, Bill 49 reduces the time for workers to file claims. Bill 49 limits the amount workers can claim. Bill 49 allows the Ministry of Labour to get out of enforcement. Bill 49 gives private collection agencies the job of settling claims and collecting moneys owed to workers.

These measures, in our opinion, will diminish access to justice and erode protection for a number of working Ontarians. In particular working women, visible minorities, people working in the garment and textile industries, in food processing, foodservices and cleaning, domestic workers and home workers, those will be the people most harmed by Bill 49 as it removes assurances that employers of designated groups will not compete simply on the basis of decreasing wages and deteriorating conditions of employment.

The committee believes that denying rights to vulnerable working people will not make the ESA more effective and more efficient. Changes to the Employment Standards Act should focus on enforcing the rights of working people while making the legislation more effective and more efficient. The committee strongly urges the government of Ontario to reconsider and amend Bill 49 so that it may serve the purpose of continuing to protect and improve the rights of working Ontarians.

Many organizations have suggested a range of proposals with a view to enforcing the rights of working people and increasing the effectiveness of this act. The Committee on the Status of Women supports these proposals and suggests changes to the act in the following areas: Prevent violations by providing public education regarding the obligations of employers and the entitlements of employees. Require posting of the act's essential points in the workplace. Implement an audit/investigation system to detect violations. Implement a system of inspections in industries that are known to violate the act, including provisions to detect and deter further violations. Implement a policy for prosecuting those who violate the legislation, including penalties that serve as a disincentive for those who violate the act. Consider and investigate anonymous and third-party complaints of violations. After all, there is no protection under the current legislation for people to keep their jobs after they have complained, and we know that about 90% of them do not.

1400

Improving enforcement and collections: Shorten the time limits on ministry investigations, proceedings and prosecutions, and commit to timely, orderly settlement. Increase the use of the certificate procedure currently provided in the ESA to increase collection of assessments against employers. Permit the Minister of Labour to establish an escalating schedule of administrative charges tied to time and complexity of procedures needed to recover money owed by employers, instead of turning the collection function over to private agencies. Compromises

or settlements should be pursued as a last resort to recovering full amounts of money owed to employees. Have all parts of the ESA apply to all workers in Ontario. Include a prohibition against unjust dismissal in the ESA. Strengthen the joint and several liability provisions of the act so that employers cannot avoid responsibility related to contractors and subcontractors.

These improvements would make it easier for workers to gain access to their rights under that in a timely manner without fear of reprisals or being fired.

These are suggestions our committee has worked on for many years to protect the workers and to ensure that within the marketplace there is fair and equitable treatment.

I'd like to submit this to you.

Mr Christopherson: Thank you very much for your presentation. As you probably know, our party has maintained throughout the tenure of this government that its agenda has disproportionately impacted on women, particularly the 22% cut to the poorest Ontarians, its attack on pay equity, its attack on employment equity and now, as we see it, Bill 49. How do you feel about that contention that Bill 49 is just one more piece of legislation that not only hurts the most vulnerable but disproportionately hurts women in Ontario?

Ms McConnell: It's certainly our contention that it does hurt the most vulnerable and that the most vulnerable are the women. With regard to the work that we do and that I do in my own community, as many of you know, I represent an area called Regent Park and St James Town. These are areas where women work at home, and it is these workers who will be most affected by this particular legislation. These are the same areas that suffered great social cuts in the last round. I would urge that when looking at this legislation you look at it in that context. If it is not your intention to erode the rights of these workers and to unfairly target them, then I would suggest that changes to this bill are necessary, because the implication of the implementation of this bill is that they will be the most vulnerable.

Mr Christopherson: As you know, the government continues to shamelessly defend the fact that it put forward this as an improvement to the Employment Standards Act. The two years to six months is one of the things that jumps out the most, and you've commented on it. Could you just expand on it a little and try to convince these people that it is indeed going to hurt the most vulnerable workers to move from a two-year time frame to claim down to six months? Because they won't admit it.

Ms McConnell: Maybe what you need are some real examples. I have a woman in my community. It took us quite a number of months to convince her, first of all, that she had a claim and, second, that the claim should be proceeded on. It's very easy for us who are very used to demanding and taking our rights not to understand how difficult it is if you are the most vulnerable and to look at what the most vulnerable workers look like. They are women. They generally don't speak English. They are isolated. They don't have at their fingertips that ability to make quick decisions.

In addition to that, she had lost her job as a result of her claim anyway, so had you not changed the amount of

time that she had to come to the realization that these were her rights and here's how to exercise them, but rather looked at how much quicker you might have investigated her claim and come up with a solution so that she would have been paid, as she eventually had the right to be, I think that would have dealt with your time frame.

The other problem is that of course if it's only six months, by the time I get this woman in front of your body the time has already elapsed and you're looking at only one or two or three days of her working history. You're not looking back at the entire working history, two or three years where, over and over again, her rights and her wages were abused.

Mr Baird: Thank you very much for your presentation today. We appreciate it. You're one of very few presenters who has put forward, I think with good intentions, some recommendations as far as changes in the ways to improve not just the act but the enforcement of the act and even preventing violation in the first place are concerned. Certainly that's appreciated. We're trying to draw on some of the experiences of not only the last year but of previous governments, many of which have had problems with enforcing the act. Obviously today we're only collecting 25 cents on the dollar, which sends out such a terrible message both to workers and employers. To workers it says, "Don't bother complaining; you're not likely to get your money anyway." To employers it says, "Just go ahead and violate the act because there's only a 25% chance you're going to have to pay the whole order." That's obviously something we're trying to work on. There's some disagreement on that.

We know we can be more helpful to workers if they come forward quicker, we know we can be more helpful to workers if we can deliver the money for them — things like the private collections and what not — but we'll certainly take back many of these suggestions. There's a comprehensive review that the minister's undertaking over the next period of time, eight months or so, that's already started to try to update the act. It was written in 1974 and there hasn't been a comprehensive review. All three parties have amended it numerous times, but there hasn't been a comprehensive review. She's going to conduct one. We'll take many of these suggestions back for consideration in terms of the review.

Ms McConnell: Thank you very much. We appreciate it. We'd be happy to follow up on any of the other questions you may have later.

Mr Lalonde: Good afternoon. Do you think Bill 49 will affect mostly women more than men at the present time, especially the fact that the number of maximum regular hours you're able to work will be taken out of the employment standards? At the present time it's a maximum of 44 hours. Will the fact that we are going to pull out this section have an effect on women?

Ms McConnell: Absolutely. First of all, what I've described really in terms of the people who most need this legislation are people at minimum wage. We know that a larger proportion of women are working at the minimum wage. The largest concern for me is women who are working in isolation at home and women who are working in the food and service industry. For them the number of hours becomes very important.

I'm sure that you read, as I did, the big Bad Boss Stories. This reminds me: To me it doesn't look like Ontario, and yet I know these stories because these are real people in my community who have spoken about some of these horrific circumstances. For many of them 44 hours was really 60 hours because enforcement was not terrific, as we know. To erode enforcement and then to remove some at least of the barricades so that when you got somebody you could put them against the wall is to me really very dangerous.

That's what concerns me. Wouldn't it be awful if all of the work we did around child labour in the garment industry overseas came back to roost here and we discovered that many of our women workers had as few rights as those children and as little money being passed in through to their children?

1410

Mr Lalonde: I must say in closing that I really support your preventing violations in there, the five points that you have indicated in there. I think every one of us should support what you indicate in there.

Ms McConnell: Thank you very much. I would hope that we would be looking at large-scale violations, so we wouldn't have the most vulnerable come forward and investigate one case at a time, but rather put those things together and know where the problems are.

The Chair: Thank you all for taking the time to come make a presentation before us today.

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

The Chair: That leads us now to the United Food and Commercial Workers International Union. Good afternoon. Welcome to the committee.

Mr Bryan Neath: Good afternoon and thank you very much. My name is Bryan Neath. I'm the Ontario assistant to the Canadian director of the UFCW. With me today is Brian McArthur, who is the staff representative for the RWDSU, which is the Retail, Wholesale and Department Store Union division of UFCW for the northern region. Also, so that you do know, there is a group of people back here who are also members of UFCW, rank-and-file members who haven't come up here but have come here to listen, make sure that our views are put forward and that hopefully the people in this committee are listening to the things we are saying.

Perhaps as an opening, I'll introduce to some of the people who may not know what the United Food and Commercial Workers International Union is. We're the largest private sector union in North America, representing some 1.4 million members. In Canada we have over 185,000, of whom 80,000 are here in Ontario. We're probably the most diversified union around. We represent well over 20 sectors. We represent people in agriculture. In the industry we have the food and meat packing process. We have retail, hotel, education people. We have health care. We have garment workers. We have home care workers. We have hospitals and we have funeral homes. It's a saying in our union that we represent people from the cradle to the grave. Perhaps for the benefit of the Tory members, we also represent several

workers at golf courses as well. I add that we feel confident that when we come here today we speak with a great deal of authority on workers' issues.

Let me first start off by saying again, as in most hearings that take place now in Ontario, that we'd like to thank the opposition parties. Certainly in this case we want to thank the NDP for having this opportunity for being here today. I'm sure, as the labour minister would have thought, by this time we'd already have this piece of legislation and it would be law and it would be just another attack on workers, and especially the most defenceless workers of all.

Unfortunately, what has happened at this committee meeting is that you've only allowed us 15 minutes for our presentation, which is impossible. It's really quite a joke, as a matter of fact. We don't have time to really fully review Bill 49 and have a chance to expose all of the damages it will cause to the working people of Ontario. We have a brief, which you all have in front of you now, and of course we don't have the time to go through the brief.

Bill 49 has been presented to all of us as just housekeeping, with a full review to come later. We know that's not true, absolutely not true. What we'd like to do is just to point out a few examples from our brief. What I'm going to do is have Brian review a few of the things. Then I'll conclude and we'll open it up for questions.

Mr Brian McArthur: I want to speak to the issue of the collective agreements being the enforcement mechanism for the purposes of employment standards complaints and I want to give you an example. It's a real, factual example that I experienced about a week and a half ago at a membership meeting in Blind River, Ontario, where I had a young, part-time individual who works in a food store come to the meeting and ask me a question about whether or not he was entitled to three hours' pay when the company was scheduling him for two hours' work on a daily basis. I said, "Yes, the Employment Standards Act gives you the right to be paid for a minimum of three hours for each period that you're working," in this case two hours of work. He would be entitled to three hours under the legislation. He said to me, "How do I go about claiming the retroactivity going back three years since I've worked here?" I said, "The only thing I can do for you is file a grievance at this point under the agreement to put a stop to it and to make sure the company doesn't do that to you in the future," ie, get the extra hour's pay.

Under the scenario the government is proposing, the fact of the matter is that this person would be disentitled to make a retroactive claim under the terms of the collective agreement. The reason I say that is because under that particular agreement there's mandatory time lines for filing a grievance, right? There are no mandatory time lines, with the exception of the two-year limitation, for filing claims with the ministry when it comes to those kinds of claims for retroactivity.

So how the government can say that this does not affect employees, that these changes are housekeeping changes, just baffles me, because this particular individual was entitled and is entitled under the current legislation to make a retroactive claim going back some two years. Under the scenario for enforcement through a collective

agreement, there's nothing he's entitled to other than to make sure in the future it doesn't happen again.

So this is the kind of problem that I don't think the committee has really envisioned by way of some of the impact, the changes, that the legislation will have on people in the province of Ontario. Yes, it's maybe an hour, maybe it's two hours or five hours, but it's still their entitlement. I think that if the government's taking the position that there are no significant changes to the detriment of employees, they have to understand that these are the kinds of things that do happen and people will be affected by these kinds of changes.

The other issue I wanted to speak about as well is the whole concept of utilizing the collective agreement for the purposes of enforcing the act. The last time I checked, arbitrators are running about \$2,500 a day, plus expenses. To me, that's a tremendous burden and a hardship imposed in terms of an additional cost that is now provided by the Ministry of Labour through the referee process. So what the government is proposing, in my opinion, is going to create more of an economic hardship for small businesses than what currently exists if there is a claim with the Ministry of Labour by way of the enforcement methods that are currently in effect through the no-charge referee system. So there is an economic deterrent in terms of this proposal as well.

Finally on this topic, in reality, if the government is proposing that the unions are going to be the employment standards cops, then at the very least I would think the government should give us the same powers as employment standards officers to demand the records, to be able to audit these companies for violations under the act, because currently we don't have that kind of power. If we don't have those kinds of powers, this of course will be of detriment to the companies because we're going to end up taking claims that are not necessarily valid to arbitration at a significant cost when otherwise they would not be processed if the Ministry of Labour would be doing the investigations.

So I wanted to bring those points to your attention, because I really don't think you folks have thought this thing through to such an extent whereby the individual employees and employers in this province are going to gain anything from it. I think it's a terrible step backwards for this particular piece of legislation.

Mr Neath: Just to wrap up in a conclusion, because I would hope to leave lots of time, we looked at this and thought that if you were truly looking at housekeeping in this act, if this truly was housekeeping, why didn't you clean up the appeals sections of the act? For a lot of members here I'll perhaps give you a little lesson here.

Why does the Employment Standards Act state that an employee who is dissatisfied with an order has the right to file an appeal — it's for wages only — and that appeal goes to an adjudicator, which is an internal review, and that the director may or may not appoint an adjudicator to review this, but in the reverse, an employer who is dissatisfied with an order has a right to file an appeal not only for wages but also for provisions under the act that deal with lie detector tests, pregnancy leave, Sunday working and also a court order for garnishment of wages? That appeal goes to a referee, which is an external review

that they don't have to pay for, as Brian mentioned before. Furthermore, in the act the director has no choice, but according to the act he or she "shall" appoint a referee to hear the case.

With a little housekeeping, if you changed "may" to "shall" and you added some of the same sections of appeal and made the appeal process the same, you would tip the level back to some form of equal justice in terms of the appeal system.

1420

But we in the UFCW know that this is not about housekeeping and this is certainly not about justice. Bill 49 is just another example of the government's attack on workers' rights to further the battle of the haves and the have-nots. We know that if you work together in true partnerships, you can create desired changes and results. But unfortunately, in Premier Mike Harris's Tory revolution, you have to pick sides. We in the UFCW know which side we're on. To the three parties here, the question I'll ask to all of you is, what side are you on?

Again, at the end, I think we should see Bill 49 go away completely. You're going to do a review of the act anyway, and you can review the changes there. Thank you.

The Chair: Thank you very much. That leaves us one minute for questions per caucus. This time we'll commence with the government.

Mr Baird: Thank you very much for your presentation. You mentioned on page 9 of your presentation with respect to section 5 and the use of private collectors that you would like to improve and maintain the current system of public enforcement. Is there anything you can suggest to us that if we didn't go to private collectors — and we know the current system isn't working. We're only collecting 25 cents on the dollar. We've got to do better than that; the status quo is not an option.

Is there any specific solution or solutions that you might have for us that would improve that 25% rate, very specific, something that the previous government under Labour Minister Bob Mackenzie thought was not doable or that the Liberals couldn't do, that we could do? Because I guess we're just at a loss as to what we could do on a cost-effective basis to increase collections. That's why we want to farm it out to collection agencies to go after these deadbeat companies and make the deadbeat companies themselves pay.

Mr Neath: There's a couple of things that you could look at when you're dealing with this question. To be honest with you, at this stage we haven't done an in-depth investigation, but there are a few things that can be done. One of the things that in my view you should do or could do is that everybody who gets hired in the province of Ontario could be given a copy of the Employment Standards Act, that the employers must give it to them as part of being hired in this province and that it be done in every language, the language of the working people. You would then have people educated to the act. You would then perhaps have fewer challenges of the act.

I've been watching with interest and listening with interest lately as the Ministry of Transportation is taking on the trucks. You're being proactive in that case. If you were proactive in the Employment Standards Act instead

of just running after claims, perhaps you would have then another opportunity of where you would increase the opportunity of the dollar.

I don't believe you simply privatize, for all the other reasons that you've heard. Certainly the presentation of the carpenters before us, I think their answers were dead on and I don't you're going to get any more —

Mr Baird: I'm just cautious that if some sleazebag employer is paying his worker \$1 an hour, they're not likely to obey the law by handing him or her a copy of the Employment Standards Act. But there's got to be more education, that's a clear message, and I agree.

Mr Neath: That is a clear message. One other thing I might add: If the government is truly worried about sleazebag employers, let's get rid of them.

Mr Lalonde: I'll be very brief. You referred to that little boy in Blind River. Do you know if those people in small communities like that are fully aware of the Employment Standards Act?

Mr McArthur: No, I don't believe they are aware of the specific provisions of the Employment Standards Act. They all know essentially that there are minimum standards in the province, but they're certainly not cognizant of any specific level of entitlement or benefit to the degree of understanding the act and the regulations to that extent, no.

Mr Lalonde: I really feel it must be a necessity that all commercial places have posted the ESA. The Employment Standards Act should be posted at every business, industry, any place that has an employer.

Mr Neath: There is not anywhere that I am aware of in any act that forces anybody to post any notices in respect to employment standards. Under the Occupational Health and Safety Act, notices are supposed to be posted, but if you went into the workplaces now, you probably wouldn't even find them, and that's under legislation.

Just a little bit in response about the fellow in Blind River as well. He wouldn't know anything if he didn't have a union. Imagine the workers who don't have a union. Where do they even go to ask the question, period?

I, through the last government, had a committee. We were reviewing the Sunday shopping working as an advisory committee. Part of that committee, which was made up of government, management and labour, was to go around the province to discuss how the new legislation — legislation, I might add, we weren't happy with on Sunday openings — was affecting workers. In our brief here we've mentioned this. One of the recommendations was stronger enforcement through the Employment Standards Act under the Sunday working provision.

Right in the report it indicates very clearly that we could hardly get any non-union workers to come to this hearing because they were terrified of being discharged by their employer. Also on this committee, what happened is people who filed charges under this provision of the employment standards, none of them were returned back to work. One of the workers dropped their claim because they had gone to work to a competitor and they didn't want the competitor to know, because they knew that if they found out they actually filed a complaint to employment standards, they'd lose their job with the competitor.

People just don't know about it. One of the things is education. People need to be educated on it.

Mr Christopherson: Thank you, Mr Neath and Mr McArthur, for your excellent presentation and particularly your comprehensive brief, which I hope the government will take the time to read.

I want to focus a bit on the flexible standards, because although it's not part of Bill 49, that monster's coming back over the next year. The minister has already said that. Given that you do a lot of chain bargaining across the province and across the country, are you possibly looking at and concerned about the domino effect, for instance, of bargaining in a concessionary mode?

The government seems to think that unions have all this power and they walk in and lay their demands on the table and the company sits there and shakes and shivers and says, "Yes, yes, yes, we'll sign as quick as we can." The reality is that it's tough bargaining these days and it's tough to hang on to what you've got. In a round of concessionary bargaining with those kinds of flexible standards, you could be forced into a situation where you've got a collective agreement that contains standards below the Employment Standards Act that you don't want but you had no alternative but to accept.

My question is, is there a concern for you that when you sit down with the next chain employer, that demand is now on the table but you've also got the added effect that it's in a competitor's collective agreement and that you might be looking at a domino effect, and over a period of years the thousands of people you represent could be working in conditions that more and more are below the standards that are there now? Is that a fair concept of sort of the nightmare scenario?

Mr Neath: Absolutely. It almost sounds like a setup question, David, and I'm sure you didn't do that.

Mr Christopherson: I'd never do that, Bryan.

Mr Neath: Oh, no. But I don't think anybody opposite to us, unless you actually worked in a union, understands — and I am saying in the retail sector. I'll talk about that for a sec, and you talked about that. In the retail food sector, the profit margin is 1%. So any particular change and any advantage that happens to the competition because of that 1% margin could potentially put the other competitors totally out of business.

Even in the chains, it's the smaller ones, perhaps the independent franchise owners, and we have many of them on contract as well. There's also a variety of unions that are involved. It's not just our union that has all of the retail; there's other unions that have them. So if a small independent signs a collective agreement in which they lower the standards on overtime hours, as an example, or hours of work, period, because they're open almost seven days a week, 24 hours a day in retail, you're going to have that competitor perhaps sign off on something like a severance package, which really isn't a cost until actually at the end of the business. That's definitely going to have an effect on the cost of doing business for the employer who's got the stricter standards in negotiations. You've got to have the floor. If you don't have the floor, then you have nothing.

The Chair: Thank you both for taking the time to make a presentation before us here today.

1430

BELISA PAULO

The Chair: With that, we go to our next presenter, Belisa Paulo. Good afternoon. Welcome to the committee.

Ms Belisa Paulo: I haven't made a presentation before so please accept any misappropriate wording or any misappropriate language I might use since I'm not used to talking in front of a committee.

My name is Belisa Paulo. I am a resident of Ontario, as you can guess, a voter. I'm a mom of two children. I'm an immigrant woman. I've worked in the amusement field, in the restaurant field, in hospitals. Where else have I worked? I've also worked as a community worker. I also provided sometimes support and information to people who needed translation, as I am actually a Portuguese immigrant woman — I'm a bit nervous, as you can tell. I also am a woman with a learning disability. I have attention deficit disorder, so occasionally the wrong words come out, and I also have problems with attention. What else? I'm also one of those people they call late. I'm always perpetually late. But I'm actually a very hard worker, so most people love me anyway even though I'm five minutes late to work.

The reason I came and I also presented those things is so you know sort of where I come from. The reason I actually came is because the title of the bill is to improve the Employment Standards Act. I fear that what's occurring in the last years and truthfully also before Harris was elected and also after Harris was elected is that employment standards have actually been deteriorating, that actually they have not been kept up to. I remember when I worked for Conklin at Exhibition Place, on numerous occasions my employer kept me overtime and I was actually a minor. He kept me overtime. I remember staying there till 11 o'clock at night and I was supposed to have an eight-hour shift, so I think I stayed like a 12-hour shift as a minor at the Exhibition.

At various places I've worked, on numerous occasions I haven't had my breaks. Some of it was out of my own recognition of other employees' — specifically, for example, when I worked at the hospitals as a ward clerk, and this is back in 1989-90, the hospitals already were under extreme stress because of budget cuts, because of nurses and floors and rooms being cut, and we as ward clerks and as nurses already had a large workload. Thinking I guess of patients' health and the nurses' workload, I often would not take my 15-minute breaks and I would also miss my lunches so that they could keep on working. I'd have to answer the phones or deal with other questions that would come to them. I would also occasionally have to stay overtime. For example, deceased people: When you have a deceased person you have to close up their file and books before the day is over, and my shift was usually the last shift so I had to do it and I would stay half an hour or an hour overtime.

When I presented that information to the head nurse, she told me it was my responsibility to do it within my time frame and that I was not entitled to any of that — that I was not entitled to those 15 minutes. Actually, usually it was like an hour, or whatever, 40 minutes or 45 minutes, that I had worked overtime — that it was my

responsibility to do that within the work frame. Truthfully, I knew, because of my lateness, they could use that against me and so I didn't feel that I had a foot to stand on to really complain, especially since I wanted my job and I wanted to get paid. So on a normal basis, I just did the overtime and didn't get paid. It was not because of me not keeping up with the work; it was because that work was required and it was needed.

I did some notes. I did not write anything for you because unfortunately I've been under quite a lot of stress lately and writing takes a lot of my time. That's another thing that comes with attention deficit disorder. While I can write reports and write grant proposals and things like that, it takes me, generally speaking, double the time a normal person does. Lately, I can't help it but I've been suffering from burnout and it truthfully came on around after the Harris government got elected. I don't know why but it did, but even so I took on two jobs. Also, the last years I've worked on contract basis as a community worker because that's basically what I've been doing: community education and community worker-type work. Lately all you can get is contract.

Since 1990, because of the cutbacks — cutbacks have actually existed on government services and government professional services since at least 1990, if not before — it's very hard to get full-time work as a community worker. I've worked on a contract basis. I worked as a mom support coordinator and my contract was for 21 hours. I actually worked on average 30 hours a week. But those contracts only pay for those specific hours, okay? I could, if I wanted to, just forget about what was needed or what the people I was serving needed and left my job after 21 hours and gone home. I could have gone home, and who cares that this woman needed advice or support because she just lost her job or because she had problems with immigration and she couldn't get the required worker's permit to go work? Actually, a lot of these women wanted to work who were on welfare. But she couldn't get it so was in despair talking to me. Am I going to leave her because my 21 hours are up? No. I stayed. I stayed and I never got paid any of that. The only reason is because there were those contracts. There is no pay for overtime. Government contracts to public community services — most of them, unless they're old-standing employment contracts before 1990 — very few of them, if any, have anything for overtime. You have to do your job within that time limit no matter who comes to your door or whatever. Otherwise, you're giving of your own time.

Within the act it also talks about maintaining contracts, yet I know for certain tons of women who are cleaning apartments. As a Portuguese woman I know about women cleaning apartments and cleaning the Ontario Legislature and cleaning the banks, the high-rises on Bay Street. There are many women who have been laid off or who lost their jobs because of age or maybe they got lucky and they got a better job. When those jobs became vacant, nobody was hired to replace those women. What they did is that they put the extra load on the women present and so the contracts were actually changed. But the women couldn't say anything about it because they want their job and they want their work and they need

their pay, so what they had to do was just double their workload. That is a change in contract. Those contracts are not being maintained. They are being changed. Their workload is being doubled or tripled sometimes, depending. Where once they did four floors, now they're supposed to do five or six floors within the same time frame for the same pay. They're not given extra hours. They're not given extra pay for that.

That was a ward clerk. It goes the same thing for nurses. They have to do the same work. Also, the idea that you could hire people to do their job or an assistant and therefore let go of more nurses because you don't want to pay people the money that they are worth, so you hire — it's changing their contract. It's changing the employment standards contracts by doing that. I've got to admit, I know how to give a bath to a patient and I know how to change a thing, but there are certain things that nurses are trained to do and if you're changing their contract and giving a part to someone else, you're changing their contract and you're also changing the safety to us all. That's another thing.

Something the speaker prior to me said, that we should get this, the Employment Standards Act, I think that's true. People should get the Employment Standards Act. I myself had trouble reading this and understanding it and putting which parts went with the old act. Basically I'm a literate person, but I admit I had trouble transferring these things. I also don't know all my rights. For example, I don't know when I should or can complain about wrongful dismissal. I didn't find anything in here about wrongful dismissal.

1440

I think employment safety should be adjacent. Over here you have things that — and the following are added on to this as parts that should be read or go along with this act. I believe the employment safety act should go along with the Employment Standards Act. I know construction workers right now — there's a pair of bricklayers who are working in a northern town around Newmarket and they're working on scaffolding that is totally inappropriate for the height of the building. They're working on town houses four feet high in front of the city hall and no building inspector has come over and told them that they are working under wrong safety standards. They have not said anything because first of all they need the money and they need work, and so they have not said anything to anyone. But they are in danger of falling off and those safety standards are not being complied with. I think they also should be part of the Employment Standards Act.

I know a woman who worked providing a library — what do you call it? — it's called a toy library. She would go to location and location. She injured her back and her employer has basically ignored the fact that she injured her back, saying it was her fault when they actually never talked to her about proper safety standards.

I think environmental law should also be adjacent to the Employment Standards Act. The environment in which we work can be a hazard to our health. I think the smoking bylaw that passed just recently in Toronto is good and it's good not just for us as people who go into bars and discotheques. I like to go to a discotheque that's

smoke-free. They're good for the workers in those environments. I think there are other environmental laws about chemical plants, sewing, whatever, all different places like that. To add to that, the smoking bylaw reminded me of something.

I actually went and listened into that and when I was there someone actually told me to go home to where I came from. I was with my two daughters and I happened to mention I was pro for the smoking bylaw and they told me to go home to where I came from. I guess they obviously realized I was not of English extraction or Canadian extraction, or something, because they knew I wasn't born in Canada. They told me to go home. I said, "Thank you, I'm very happy to be here and this is my country." What that brings up to me is discrimination and why I bring the next one. Employment equity, which this present government dismantled, is important and is needed under the Employment Standards Act. Just like this woman discriminated against me and told me to go home in a public meeting, this sort of thing happens at places of work. It happens not only for people of different colour and of different ethnic origin, it also happens for people with disabilities like myself with attention deficit —

The Chair: Excuse me, Ms Paulo. I don't mean to interrupt, but I just wanted to alert you we are just about at the 15 minutes, if you want to make some closing comments.

Ms Paulo: I'm almost finished. I worked at a community centre where the seniors' department had been run by people from South Asia. Their population had basically changed the seniors to basically English-speaking. The executive director, during the committee, said, "Well, it looks like we need to change staff in that department." I asked him, "Why do we need to change staff in that department, because they're all South Asian and now the majority of the population is of English, basically Canadian-speaking background?" And I said, "Well, does that mean that because I'm Portuguese I can only serve Portuguese-speaking people?" That's what he was implying. The South Asian couple can serve anybody. That was breaking employment standards.

Employment standards should also include being free from being discriminated against, allowing for people with disabilities to have flexible work or bring up other suggestions so they could work in the environment if there are problems with their work performance or whatever so they can be employed.

For example, myself, I like to work evenings because it's quiet, less distracting for me. Also, I've had health problems related to stress, so sometimes I'm sick during the day, but then I come in the next day and I work in the evenings and I catch up. Yet sometimes my employers, a few of them, have not been flexible enough to do that with me and I've lost jobs because of that even though I was doing my job. I might not have been the most excellent employee, but I was a dedicated, hard-working employee and I shouldn't have had to go through that.

Another thing —

The Chair: I'm sorry, Ms Paulo, but we're now past 17 minutes, so I'm going to have to cut you off. Thank you very much for taking the time to come and present before us today.

COMMITTEE ON MONETARY AND ECONOMIC REFORM

The Chair: Committee members, be advised your agenda has changed. The next group is the one you had voted to take — it was a last-minute addition — the Committee on Monetary and Economic Reform. Good afternoon, and welcome to the committee.

Ms Sydney Marcus-White: Good afternoon. I'm pleased to be here. I only heard about this yesterday. There was a cancellation and I thought I should come in and speak.

We at the Committee of Monetary and Economic Reform are concerned that the people of Ontario do not understand how we arrived at this desperate economic situation and the devastating loss of jobs. A lot of them don't understand.

Remember the game where you had to connect the dots when you were a little kid? You had your colouring book, and when you connected so many dots you saw a picture. We have some answers for the problems, at COMER — we call it that in short form — but first we want to give you a few of these dots so you can connect them.

In 1989, the free trade agreement came into force, the Trojan Horse of the free trade agreement. Now, if any country needs a few tariffs, it's us. Mulroney had no mandate to do this, nor a popular vote. He did, of course, get a lot of foreign money to overthrow Joe Clark. That's one dot.

In 1991, when the Reichmanns claimed bankruptcy and the private banks lost billions in Mexico, the governor of the Bank of Canada, to help them out, said, "Well, boys, you don't have to put any more collateral deposits into the Bank of Canada." Of course, the speculation then got even wilder. So as of 1991, we have no reserve in our central bank. There has even been talk at the Fed, by Greenspan, that at some point our bank should be rolled into the Federal Reserve, but of course we might have some say. Very nice of him. And Gord Thiessen and Paul Martin seem to like it that way. Of course, you could say that Paul Martin has a bit of a conflict of interest.

Two other countries in the world have no reserve in their banks. They are both small tax havens.

In June 1995 Harris was elected as Premier of Ontario. One month later, he was on a two-week fishing trip with Georgie Bush, the George Bush of the S&L loan scandals where thousands of retired people lost their life savings, but his sons came out of it smelling like a rose. One's governing Texas; the other one almost got in in Florida. On that fishing trip, I always wonder, which one was the bait there?

The winter before Harris's election, he spent many hours at the Bradgate Apartment Hotel. I live near there. He and his corporate cronies, with the governor of New Jersey — which has the filthiest water in North America, I might add, and is totally ghettoized — traded ideas about how this province would be run when Harris was elected. I have been to New Jersey and Michigan, much against my will. I didn't stay long.

Have you got the picture yet? We do not want to go over the cliff with these corporate lemmings.

1450

If you want a recipe for total poverty and destruction, here's the recipe: How to dismantle a country and sell it to your neighbour.

Step 1: You force something like NAFTA into Canada, with a loss of not thousands but millions of jobs.

Step 2: You take away social services, with no excuse but the deficit myth — which is a myth, by the way, because this government never counts its capital investment, which more than balances out this deficit. So you take away the social services, using that as an excuse, so that people will work for anything.

Step 3: You remove the powers of the Bank of Canada so that this manufactured depression will be permanent.

Step 4, which is coming up: You divide the people by making an issue out of language and forcing apart the two societies that built this country together. They both sweated, they both lost blood, and this wouldn't be happening if it weren't for a few special interests instigating this.

The people who have done this are still doing this. They're being paid well. Harris is on the same retirement plan as Mulroney. Maybe he has an apartment in New York in the same building. I don't know.

But to get on with it, here are some answers to the problems that corporate influence and greed have created.

We can disengage ourselves from NAFTA with six months' notice. This is right in the agreement. I doubt if anyone here has bothered to read it. It costs \$150 to buy and there's something like 4,000 pages.

We can disengage. However, the corporate media — I've been on the corporate media. They will allow me to speak, but when I look at it the next day after the taping they have blanked out the part where I have announced to the public that we can back out of this. That's never in there. And that goes for the CBC too. They have prevented this news from reaching the public, as a lot of people are benefiting in their course of suck up and kick down.

We would not need cuts to our social programs if the Bank of Canada took on our debt, and it could also take on the provincial and municipal debt. The Bank of Canada still has the same charter that established our central bank for this purpose, it has the same mandates, but Gordie Thiessen and Paul Martin have both decided to ignore the charter of the Bank of Canada and its mandate to relieve recession and depression.

Another suggestion: Third, any party that has as its platform the introduction of a financial transaction tax of one tenth of one per cent — that's all it needs — would definitely be elected, as this financial transaction tax would do away with the hated GST and pay down the deficit.

Paul Martin says, though, that a financial transaction tax would be too difficult to administer. Well, maybe he would like to administer a depression. Is that easier?

This tax would also make sure that the corporations that now pay only 8% of the total tax burden would be paying their appropriate tax to the country that is making them their absurd and bloated profits. This tax would slow down the runaway speculation that the bank and the

traders are indulging in to the detriment of the real economy.

The so-called experts say we can't demand the corporations to pay a fair tax or they will leave the country. Meantime, they are downsizing, and the ones that have done the most downsizing have their names at the top of the list for workfare people to come in and do this labour at below minimum wage.

And they're not cleaning up their toxic waste. They don't even add it into the cost of their product. They leave that to us to do.

I ask, does a body die when you remove the leeches? I think not. Honest corporations, or those willing to give a little leeway to our citizens, will stay. Money is the blood of a country, and as such it needs to circulate, not rest in the hands of a few who have become an élite, through no virtue but that of compound interest. There's nothing élite about them, certainly not their ethics. We need low interest rates, not the usury that is choking off this economy, and the Bank of Canada could do that. The vertical monopolies and the media cartels have silenced all the news that would remedy the haemorrhage of this country.

I say to you now that this government does not need Brown-shirts. Maybe that will come later. At present, as we speak, two American companies, Great-West Life and a company called UNISYS — which by the way, has been banned from operating in several states for unethical standards, bad product, all the rest of it — with the Royal Bank are arranging or trying to arrange with Metro council that they will institute a system to fingerprint all persons who are on any kind of government assistance, and they will be paid millions to do this. This is not to end the 1% fraud in welfare. If they want fraud, let them go to Bay Street — forget about welfare, that piddling amount. This is to keep track of the huge, cheap labour force that NAFTA and the corporate downsizing have created. Fifty thousand more jobs in banking alone will disappear within the next three years, and as these people lose their jobs and eventually have to go on some kind of assistance, they will be fingerprinted.

In the 1930s and back to Socrates the definition of fascism, and I will give it to you here, has been — everyone who thinks of fascism thinks, "Oh, Hitler, Brown-shirts, torture, big parades, all that." No. That's how it ends. The definition of fascism is — listen now, it might be of some help — a business and government alliance, enforced by the military and domestic police. That is the definition of fascism.

There's nothing wrong with our government. We don't have too much government. We pay taxes to a government; they give us services. What do the corporations give us? There is a difference. You cannot involve business for profit into a government, and you have got to learn the difference between value and price. We cannot measure everything by the marketplace and price. We are losing things that have value because we have confused the economic definitions of "price" and "value." There are certain things of value that can never be measured, and those things are being destroyed.

In Queen's Park last year — to get back to fascism — I was there. Nine students, all girl students, one pregnant,

from the university, ran up the steps and at the top of the steps were four rows of OPP. All the media were there. It was a huge rally: 7,000 people, buses. They were all there. The speeches went very well. All the media were represented. Towards the end, a few students ran up these steps, maybe 20 or 30, saying, "We demand Mike to come out and speak with us." Of course, Mike always went in the back door and never came out to speak to anybody. He didn't even do what the Pope does. He didn't even come out and wave his hand and say, "Get off the lawn" — nothing. We never saw him. They ran up the steps without even pencils in their hands, totally bare-handed, to ask Mike to come out. I saw this with my own —

The Chair: Excuse me, Ms Marcus-White, we're already at the time. If you have any brief closing —

Ms Marcus-White: Yes, I will be brief. I was there. I'm still talking about the results of this government. I saw nine female students beaten about the head until the blood flowed to the ground. The unconscious ones were taken away in ambulances. They had nothing in their hands, not even pencils.

None of this was talked about by any of the eight corporate news channels represented there that day. One channel only showed a picture, which they quickly cut off, of the one pregnant woman beaten to her knees with blood obscuring her face.

As a member of the Council of Canadians, a Newfoundland and a poet, I say to you that this country was and is still the light of this continent, and in the words of another poet, we will rage against the dying of this light.

The Chair: Thank you very much for taking the time to make a presentation.

1500

DURHAM REGIONAL LABOUR COUNCIL

The Chair: That takes us to our next presentation, the Durham Regional Labour Council. Good afternoon and welcome to the committee.

Mr Tim Eye: Good afternoon. I'd like to thank the committee for allowing the Durham Regional Labour Council the opportunity to voice some of our concerns on Bill 49 as proposed. My name is Tim Eye and I'm the first vice-president of the Durham Regional Labour Council.

Before I get into what is wrong with this bill as proposed, I would like to commend this government on a couple of provisions that are, in our view, overdue and proper. We support the minister's efforts regarding vacation entitlements and welcome those provisions under pregnancy and parental leave. These steps are positive ones in view of what people have to face day to day in Ontario.

I do, however, compare this bill to a barrel of apples with the aforementioned provisions as county fair award winners, the rest of the barrels being grounders of fertilizer grade, with this government being the owner of this barrel selling or trying to sell this rotten bunch of apples with three good ones to the customer or the public. I believe that the public, if they were as informed

as all these stakeholders who regularly come before this government, would in general hold their noses and walk away, having been enticed by three good apples and seeing what was at the bottom of the barrel with their noses.

One mistaken assumption this government has made is that workers and employers are somehow equal. The fact is they are not. Even in so-called powerful unions, like the CAW of which I am a member represent them, the employer has the power to hire and fire, not the unions.

Another assumption this government is making is that the grievance procedure will resolve the differences between the workplace parties, when in practice that conjecture is the farthest thing from the truth. This assumption goes hand in hand with the supposition that all employers will treat their employees fairly.

I can and will cite some well-known truths in what I am implying with the common knowledge in General Motors, Oshawa, where I work. The grievance procedure is a joke. Management in our plants have taken the attitude, "When you don't like how we violate our collective agreement, file a grievance," knowing full well that it takes years, in most cases, to resolve them. Don't take my word for it, call CAW Local 222 at (905) 723-1187 and ask any union representative how long the grievance procedure takes to resolution.

This government will give multinational corporations a licence to steal from unionized workers if the enforcement powers of the Ministry of Labour are removed or watered down with inane assumptions like those before this committee today. It is irresponsible to let the fox guard the hen-house, which is exactly what Bill 49 will allow if enacted into Ontario law.

What labour legislation presently ensures is far from adequate today, let alone the regressive measures this government is now considering in order to placate the business community, which, by the way, is a voting minority at election time. To move backwards over a century of labour relations history is ill-conceived and this government never had a mandate from the people of Ontario to regress a century of labour law reform.

The Employment Standards Act places an onus of social responsibility on employers in this province: In order to participate in the people of Ontario's economy, minimum standards ensure a level playing field for all participants in our economy. To pull the field from under the people this government is supposed to represent, that being all Ontarians, goes against the grain of the values our grandparents espoused.

In our opinion, the act suffers a major flaw now. That flaw is enforcement. It is sadly lacking and, to add further injury to the working poor, places limits on moneys owing. Non-unionized, minimum wage workers are now being told to resort to the tort system of lawsuit against their former employers who have in most of these instances fired their minimum wage worker for seeking financial redress for moneys owed for work performed in good faith, or unjust discharges by employers who in the real world have the upper hand with hire and fire powers and financial clout.

Tell me, with the bankrupt legal aid system, how unemployed workers who are owed money, who are

ineligible for unemployment insurance benefits, who are waiting for cut back welfare benefits, can seek justice from a millionaire franchise owner in the service sector of the economy? I'd like to know that one.

I am presently dealing with a case of a franchise coffee shop owner and his minimum wage female employees in Oshawa. They're all single moms, the ones who are mothers. This irresponsible employer hires help, then expects them to work their first 15 hours for free. He demands any shortfall from the till from his workers, even when he has the key to the drawer, when he has access to the till during their shifts. That's a violation of the act. He also demands any surplus from his workers in the food and beverage industry and places further hardships on his staff by demanding their tips as surplus that belongs to him.

Can you not see the monster you're creating with Bill 49? I think not. By caving in to organized business and regressing to the 19th century concerning working people whom you purport to represent is disgusting, in our view. Would you consider putting a maximum cap on profits for Ontario corporations?

This government is not a government of the people of Ontario. I hope you can meet your maker some day and know in your hearts that you did do the right thing with your lives, the right thing being, you made your world a little better for those less fortunate than you.

This whole matter is not a legal issue; it is truly a moral one. This bill should be scrapped in light of the fact the working poor will ultimately be left to fend for the table scraps off the banquet table you are setting for those in this province with the financial clout to buy their legislators like you.

You should all hang your heads in shame for even considering such a regressive move. Brian Mulroney preached, "Free trade, free trade." The government of the day spent millions on a slick ad campaign. The workers in this country witnessed the exodus of jobs. Government tax revenues went down. Unemployment, crime and poverty are the fruits 10 years later of a policy that will take two generations for this country to recover from. The sad thing is you continue to preach, "Free trade, free trade."

Open your eyes, open your ears, open your minds to the truth. The problem with our economy is simple human greed. The few with the most want the rest from the host. If they can't elect a government to do their dirty work, they'll try and buy one. I truly hope you're not for sale.

In conclusion, the Durham Regional Labour Council wholeheartedly supports the Ontario Federation of Labour's position regarding Bill 49. Despite the fact our council represents unionized workers in the region of Durham, we also fight for those who do not have the benefit of belonging to a trade union. If a royal commission is called regarding the labour standards act, the Durham Regional Labour Council would request standing before the commission to have workers' voices heard. I hope the minister will do what is right and scrap this bill and keep the three apples.

I will try to answer any questions you as a committee may have now. Thank you for your time.

The Chair: That leaves us two minutes per caucus for questions. That would mean that this time the third party, I believe, is the first up.

Mr Christopherson: Thank you very much for your presentation. I want to first of all credit you and acknowledge the leadership you and your council are showing in fighting for those who don't have the benefit of a union. Oftentimes, one is left with the impression that some government members think of the union in the same way they think of a corporate entity, that it's there strictly for its own internal purposes and to see how much dues money it can collect. Those of us who have a background in the labour movement know it's quite the opposite, and every time a union comes forward and speaks on behalf of those who don't have the benefit of a union and who are under attack by this government it makes me very proud of my background. I think you're continuing that great tradition.

Earlier in your brief you talked about the fact that the government seems to think workers and employers are somehow equal. I've seen that in these hearings through their comments and the way they seem to view what happens at the bargaining table. I don't know how many government members have actually sat at a bargaining table. I have, many times, as you have. It's not equal. The whole idea that scabs had to be made legal again to create a level playing field is just so far from reality that it's not hard to understand how Bill 49 could get in front of us.

I want to ask you one thing about Bill 49 and its impact on the unorganized, the working poor. Other than the three apples you mentioned, is there anything in there that's actually going to help the working poor? Because the government has labelled this bill An Act to improve the Employment Standards Act. Is there anything there for the working poor?

Mr Eye: The three apples are the only improvements I can see. I think what they're trying to do with Bill 49 is put out a campfire with napalm. If you think organized labour is a problem in the economy of Ontario, you're looking in the wrong place. You don't put fire out with gasoline; you put fire out with water, the water being a fair society where everybody has an equal and fair and just opportunity to partake in our economy. As free market players, if you preach the market, practise it, but don't preach it if you're not going to practise it.

1510

Mr O'Toole: Thank you very much, Tim. It's nice to see you here with a fresh and enthusiastic presentation. Much of what you say we've heard before.

On page 3 you say, "In our opinion, the act suffers a major flaw now." You go on to state specifically the enforcement portion. I completely agree with that. If we can only agree on one thing, that we would be judged on the changes to the enforcement mechanism, putting it into a collection agency where they don't get paid until they collect, I believe, Tim, will improve it, meaning today we only get 23 or 25 cents on the dollar of the judgements that have been made. That isn't acceptable.

To me, if a person has worked, they're entitled to be paid. I don't think that's disputable, but as a government, for the last 10 years, rates have been actually falling. Would

you agree and I agree — you made the statement that it's flawed — that is one approach, to improve the collections, the collections have to be paid.

Mr Eye: I would agree, on condition, the condition being that instead of giving the money to a collection agency, ensure the worker has all of it. Instead of collecting only 25 cents on the dollar, hire three times as many more collectors under government auspices with the clout and the power of the government of the people of Ontario behind it so that they can collect. Hire three times as many enforcement officers at the Ministry of Labour.

Mr O'Toole: I think if you look at collections and those amendments in this proposed bill here, the employer, the violator, the offender, the bad boss is going to pay for that collector, not the people of Ontario who aren't really privy to this. It's the bad employer. That's what our minister said in here. I don't want to just get carried away with that we see things differently. I think there are some things we could agree on.

I believe the person who has violated the act, that is the bad boss, should pay the bill. I believe the employee who has worked the hours in a well-intended way deserves to be paid, and I believe all members on this side agree with that, and we're going to be held accountable for that.

Really, you'd have to agree the current collection system isn't working. I ask you to give us a chance for this new collection system to work. We need to work together. We need your support. But it can't be just an ideological battle. The collection agency won't get paid until they collect. Their actions are directed by the director of employment standards, so there is a connection. There is government responsibility and it's to help the most vulnerable. I have faith in it. Some things we'd certainly disagree on, but I think there are some parts we could agree on.

Mr Hoy: Thank you for your presentation today. I take note that you support the Ontario Federation of Labour's position regarding this bill. I'd like to ask you a little bit about the employees you say you're representing or trying to help who worked at this coffee shop. You say that the employer was demanding their tips. Was he demanding their tips in total?

Mr Eye: Any surplus at the till. In the real world, surplus is a tip to the worker. I'm a frequent customer at this particular coffee shop and I'm not going to name names because I don't want to prejudice the case before it gets heard, but what happens is that if I go in for \$1.50 doughnut and cup of coffee, I give the girl at the till two bucks and say, "Keep it." So here's a small tip in appreciation, because every time I walk in there that girl knows exactly what I want to eat and what I want to drink, and for remembering me, that's my token of appreciation.

At the end of the day — this girl is not a university graduate by any stretch of the imagination. She's doing what she can to stay off the government dole. She's an honest person, hard-working and means well. However, she's being unjustly turned on by an employer who is not very scrupulous in the real world of business. There are honourable businessmen, but this guy definitely is not one of them.

We're going to ensure, through our labour council and through our political action committee and through the Ministry of Labour, that this guy either straightens up and flies right or he's going to get his wings clipped, big time.

Mr Rollins: Good idea.

The Chair: Thank you for taking the time to make a presentation before us here today.

AMALGAMATED TRANSIT UNION, LOCAL 1573

The Chair: That takes us now to our next presentation, which will be from the Amalgamated Transit Union, Local 1573. Good afternoon.

Mr Andre Monette: Good afternoon to all. My name is Andre Monette. I originate from northern Ontario, 240 miles north of here. I'm a little closer to the Employment Standards Act than most people for a lot of reasons, one of which is that, being from the north, we're sort of remote in a sense from government offices. It's kind of difficult to get into some professional's office to try and get somebody to look after our problems.

Another fact is that I am a member of a family of 15 kids, which means that most of us didn't get a big education in school. There are a few teachers in the family, a few professionals, but I'm one of those who, being one of the oldest, gave up my education to help with raising the young ones.

My father was a school teacher. He taught school for 42 years. He was also a farmer and, obviously, a father. He was in his younger days an organizer with the Liberal Party federally, and I knew a number of the federal members personally. They used to have their meetings right in the house. I'm also related to some pretty heavy-duty guys federally. You all know the Desmarais family from Sudbury. Paul Desmarais is a cousin. Pierre Trudeau is also related, but even a bit further. You're probably thinking, "This guy is a Liberal. If he ain't, he's got to be something else." I'm not going to tell you what I am.

I started working at the age of 18. I didn't bother with unions for quite a while. I ended up working for an auto plant in Oakville and started to tinker with the union a bit, and from there became a bus driver for the city of Brampton. I got involved a lot more there. I organized the local union. I have a good working knowledge of the Labour Relations Act and the Employment Standards Act because I've had to wring the employer's tail a few times. That's why I'm here.

I'll read you my introduction, which is a page and a half, and then I'll go through the conclusion, which is about the same.

This submission is made on behalf of the members of Local 1573 of the Amalgamated Transit Union, who are the employees of Brampton Transit in the city of Brampton.

The members of our local union are regular working people, like the vast majority of Canadians. We have families, rent or mortgages to pay, groceries to buy, children to raise and very often aging parents to worry about, friends we care for, ambition for our neighbourhoods, concern for our country's future. Like others, we

can't separate our individual interests from those of our families, our extended families, our friends, our neighbours and our society.

1520

When we speak with concern about legislation such as Bill 49, it is not simply concern for ourselves that we are expressing, because in fact this legislation does not have a great direct effect upon us in our present occupation, meaning that at this point we are a union and we sort of try to look after our own problems.

We are indirectly hurt because Bill 49 hurts people like our children and other friends and family members who are trying to build a life for themselves. We are indirectly hurt because this legislation will lead to a greater disrespect by employers for the law and a stronger feeling among some employers that employees can be abused and stolen from with impunity. All this is because, through this legislation, the Conservative Party is giving the green light to bosses who want to steal from their employees. We are indirectly hurt because someone whom I work with today may be laid off or forced to leave because of a workplace injury or find himself or herself trying to rebuild and relying on the enforcement of the Employment Standards Act.

This legislation is part of a shift from a society based on respect for the law and the rights of others towards a more polarized place where the power of those who are greedy is no longer held in check by the laws of our society. Indirect as it is to many, this legislation will have an impact upon every middle-class working person in Ontario.

You can review my submission at your leisure. In conclusion, this is shameful legislation. If I were an MPP, I would be morally bound to oppose this bill. Unfortunately, I know that the members of the Conservative caucus are bound by the whip, who is appointed by the Premier, who is indebted to the wealthy special interests who believe they are the givers of morality and not subject to it. This is the "do as I say and not as I do" mentality. Just over 50 years ago, a war ended that defeated this mentality, and here we are again hinting at a resurgence of this ideology.

Members of the committee, this legislation shows that this government is not only morally adrift but has also become a gang out of control, crucifying the scapegoats and punishing the weak and defenceless. The labour movement and parts of the political opposition are the only voices for those unorganized workers at the margins of the workforce who need strong enforcement of the Employment Standards Act and who will suffer because of the elimination of a third of the act's enforcement officers through Bill 49. This piece of legislation will be called a gift to the unscrupulous employers at the expense of the most vulnerable citizens of our society.

Remember, a society and a nation are judged on the manner in which they treat their minorities, their poor and their less fortunate. After Bill 49, if passed, this province will cause this country to fall a good number of rungs in the ladder that we now sit on top of as the best in the world. I ask you to think about that.

I urge opposition MPPs to use every means at their disposal to force the Conservative Party to amend this

legislation so as to eliminate the green light level, to punish repeat offenders against this act and to investigate all incidents of lawbreaking upon the complaint of a victim. Common sense dictates that the present legislation should be improved with stronger enforcement mechanisms rather than weakened by diluting it.

I appreciate the time that you have given me to speak to you and to express my views.

The Chair: Thank you very much. That leaves us just over a minute for each of the caucuses. This time the rotation starts with the government members. Mr Baird.

Mr Baird: I just want to thank you for your presentation. I don't have any questions.

Mr Hoy: Thank you very much for your presentation. You have done well. Coming from a large family, there must have been some difficulties in that but no less joyful experiences. My father is 10th of 11 and they had a joyful household, but none the less it was difficult. They had to work very hard.

Mr Monette: I'm fifth of 15.

Mr Hoy: You make mention about "crucifying the scapegoats and punishing the weak and defenceless." I read an article not so very long ago that would agree with that, that when governments really are struggling, particularly with unemployment, deficits, huge debt, the easy way is to point fingers at the lower class. It's historically been done. It goes back into even the Middle Ages, as this article shows. I think maybe there's a little truth in that in what we see in what's going on in North America, not only in Canada but the United States as well. It's very easy to blame the poor and the defenceless for the problems and the ills of the whole country. I'd just make that comment, and I appreciate your presentation today.

Mr Christopherson: Thank you very much for your presentation. I want to take a little different approach this time. Yesterday, there was a news conference held by a group called 32 Hours: Action for Full Employment, I believe is the name. They're talking about lowering the number of hours, not a Bill 49 version of improving the Employment Standards Act but really improving it: Lower the number of hours that people work without a loss in pay for those at the lower end of the scale; at the higher end, they might be able to afford that more.

Mayor Barbara Hall was there. Her reason for being there was that if enough people had decent-paying jobs and had enough income, it would affect all aspects of our community, and she specifically mentioned public transit. Of course, that's the area of workers that you represent. Her thinking was that if the transit system was used more, then they would have more money to provide a better quality of life, because public transit is an important part of quality of life for a lot of people. Therefore she felt it was appropriate for her to be a part of a move to have people get jobs, create jobs, and do it through this means.

Just give your thoughts on that, given that you represent the public transit sector, and how that relates to the ability of people to have enough money to use your service.

Mr Monette: In this day and age, take an average family that may have two, three or four mature young adults at home. You could conceivably see three, four,

five cars for a lot of people. I know one particular family with three kids, and there are five cars in the family. Put an average price on five cars. You don't buy a regular vehicle today for much less than \$18,000 to \$20,000. Add the cost of insurance on top of that, then the cost of maintenance of all that, then the other cost of building roads and upgrading streets on a regular basis to keep all these cars on the road, add the cost of trying to control the pollution and everything else that goes into this thing, regular maintenance.

If this family was to cut that cost down to a couple of cars and invest, I would think, a quarter of what they spend on the rest, somehow through some kind of distribution either through the tax system or whatever, and improve public transportation, improve the whole chain of a grid of transportation, they would be further ahead, every citizen in the province would be further ahead and I think the country as a whole would be further ahead. And our health would be better, as a long-term effect.

The Chair: Thank you for taking the time to appear before us today.

1530

TIM ROURKE

The Chair: Our next presentation will be from Tim Rourke. Good afternoon. Welcome to the committee.

Mr Tim Rourke: I guess staff has gotten copies of my thing to everybody. I haven't had time to make it all fancy; it's basically notes.

Why am I here? I'm pleasantly surprised at being invited here to talk about Bill 49. I think I'm here because somebody on the committee confused my name with somebody from London whom they really wanted. However, I wouldn't waste my time coming here if I didn't have something to say about it. What I have to say is exactly what most of the power suits around here, whatever the interest they're representing, are not going to want to hear, so it should be a lot of fun.

I'm originally from Alberta. I've been in Ontario for about two years. I think I really should have left about 20 years ago, but I'm rather disappointed to see all the rubbish that I was hoping to escape from starting to happen here. It's the same kind of deranged philosophy that Klein was putting into effect back in Alberta happening here. I am determined to do what I can to stop the whole thing.

I am one of these people who haven't worked steadily for almost 15 years, and there are three reasons for that. One is health. That was probably due to the impossibility of obtaining any kind of proper health care in my home province. I've had better care here, so I've got better health and energy, but that's all in jeopardy now. The second reason is because of economic reality. Any bloody fool who is confused about what economic reality I'm talking about can stay confused. The third is just philosophical reasons. I think I'm going to be dead before I'm ever somebody's employee again, because of philosophical convictions that developed out of my experiences with labour standards in Alberta.

I still have some dreams of having both a worthwhile job and a reasonable income, although I no longer expect

the former to supply me with the latter, so I spend a large part of my abundant leisure, scarce energy and scarcer funds doing my small part to bring about a change in that economic reality to make that dream a personal reality for myself and every other marginalized person. I'm involved in a lot of different groups, but I'm not a true believer in any.

I've done some reading about economic matters in order to broaden my understanding and I'm familiar with all the trendy ideas about technological unemployment, reduced work time. I have developed strong views about the rights of truly free individuals to do what they damned well please with their own time and have a reasonable income with which to do it.

I should also briefly say what I don't believe in. I have no use for any of the conventional economic theories, including Marxism or anything like that.

Corporoids these days tend to throw this cliché, "You're a conspiracy theorist," at people. No, I'm not a conspiracy theorist. I mean, that's kind of cute. You associate the target with anti-Semites and redneck militia and so on. I am a subscriber to Murphy's law number 29, never to attribute to malice what can be adequately explained by stupidity. The trouble presently in Ontario, and in the world generally, can be as easily explained as a result of the mismanagement of educated idiots, especially ones with economics training, as it could be by the product of some malevolent influence in a command post somewhere.

I'm not a union guy either. It's not that I'm against them; they've just never given me any particular reason to be for them.

What I'm going to say, how I'm going to say it and why: I have not read Bill 49 and have no interest in reading it. I think it is important to point out that anything I or anybody else has to say at these hearings about what a labour bill should really be like is pretty much hypothetical. There's no shortage of good ideas. There's just a complete lack of any means to achieve them over the corporate will. Achieving any of this will require some constitutional reform, electoral reform, including things like proportional representation, to prevent the present fiasco we have of fanatical minorities hijacking the government. I've got four topics that relate directly to labour laws and one to changing laws generally. The more enlightened members of the panel can feel free to indicate which in particular are interesting to them and I will focus on them.

Abusive employee relationships: You might have guessed that would be my simplest beef about this legislation, its trashing of labour standards. As I said, I'm from Alberta where they specialized in this stuff way before it was ever thought of in Ontario. I've never worked in Ontario or have gone out looking for work in Ontario, so I just don't know how extreme things can be. I don't believe it could possibly be any worse than Alberta.

I am owed lots and lots of money by slime-ball employers from back there that I'm never going to get back. They've used the welfare system and these job-find systems as almost perfect methods of making people work for nothing. I don't know why they even need to

bother with workfare. It's just work. You either go and participate in this thing or you're cut off and you just get forced to work for nothing, and then, when you quit because you're not getting paid, you're cut off any kind of welfare assistance and you have absolutely no recourse. There's no government office that will do anything. There is no enforcement at all and never has been, really. You go to some government office and they tell you to take it to court, and you've got to spend \$200 or \$300 on that. There are all kinds of employers out there who just never pay their employees. They just hire a new crew every couple of weeks, and why not? Who's going to stop them?

Reduced work time: I know that 32 Hours was in here this morning. Somebody has been talking about them, so I won't belabour the relationship between technological change, reduced hours, unemployment and lowered living standards.

I have a lot of ideas about some possible limitations to that as a strategy for eliminating unemployment. I don't think full employment is really the objective. Slaves all had full employment. Nazi Germany, Stalinist Russia, they all had full employment. They had full employment in the gulag. What people need is control over their lives, to work where they want, when they want, basically to have some control over the terms of it. The only way that's ever going to be achieved is by a guaranteed minimum income, and that's outside the Ontario government's powers and outside Bill 49, but there are ways that an enlightened Ontario government could precipitate that. I'll get into that maybe in a minute.

Here's the core of what I want to say. Here's the kind of labour bill that I think is really needed. As far as workers' compensation, I don't see any reason why employers should not be required to insure all their employees. If they had to pay the costs themselves of private insurance for employees, they'd soon be screaming for workers' compensation.

I know this isn't in Bill 49, but it's in this other bill they've got that isn't even being discussed, this thing about taking away any rights in that regard. Employees should have the right to sue their employers for injuries caused by their negligence.

1540

Reduced work time is not a perfect weapon against unemployment. It can't be used as a paring knife. It's going to have to be used as a chainsaw. The workweek must be cut, cut, cut until unemployment disappears. We'll have to go down probably to a lot less than 30 hours because there are so many hidden unemployed coming out of the bushes and because employers will try to make the same people do the same work in less time and use more labour-replacing technology.

Of course, this would require actually mandating a legal workweek, which doesn't exist right now. They didn't include a ban on overtime so that a gain does not develop or the reduced workweek doesn't become a mere excuse for more time-and-a-half work. You could have a system where hours are banked over fixed periods so that a person could work long hours at certain times and then take time off. The key to it is that the total number of

hours worked in this society has to stay the same or go down.

Minimum wage would have to go up to protect the people at the bottom, to shield the bottom. I've put a little bit of a formula in here for calculating what the minimum wage should be to keep minimum wage earners above taxes and what not. Those are my ideas of what a good labour bill would be like.

I believe also — I'm not going to get into this too much — this would produce sort of a chain reaction of events that would force reform of the income tax system, personal income tax system, maybe the sales tax system that would force the federal government to produce reforms that would greatly solve the problem of impoverishment. All this stuff, of course, takes a completely different kind of government than we've got here right now. It's not going to happen for the time being at all, which brings me to my last subject.

I don't like any of the parties here. All of them have been co-opted by the corporatists, but there are enlightened factions within each party, and I think these people need to start to focus their minds a little bit on coming together in some sort of coalition across party lines to just get this nonsense out of here, all right? Then we begin some serious political reforms and start to have a structure whereby we can stop monstrosities like this Bill 49 and get the type of labour legislation that we really need. That about covers it. Who's got questions?

Mr Baird: It's just a comment, not a question. I noticed number A(2): "I am pleasantly surprised at being invited here to talk about Bill 49. I think I am here because some tyro in the committee office confused my name with somebody from London who was of the type they really wanted to stack these hearings with."

We've been accused of a lot of things, but I don't think anyone has accused the government of stacking the committee with its own persons. Actually, you're here because we, the government, put you on our list; we put both business and labour groups on our list. We wanted to hear from both sides.

Mr Rourke: I've noticed there are some pretty good people talking out here.

The Chair: Thank you very much for taking the time to make your presentation before us, Mr Rourke.

WORKERS' INFORMATION AND ACTION CENTRE OF TORONTO

The Chair: That leads us now to the Workers' Information and Action Centre of Toronto, if they could come forward, please. Good afternoon. Welcome to the committee.

Mr Rob Maxwell: Good afternoon, gentlemen. I want to thank you for the opportunity of presenting to you today. My name is Rob Maxwell. I am a member of Toronto city council and I am the chair of the advisory committee for the city's Workers' Information and Action Centre of Toronto. With me today is the coordinator of the centre, Shelly Gordon.

The Workers' Information and Action Centre has endorsed the brief that was presented to you yesterday by the Employment Standards Work Group, so we won't be

presenting a formal brief this afternoon, but a few remarks based on our experience that will reinforce the points that were made in that brief.

The Workers' Information and Action Centre of Toronto is a unit of the city of Toronto that works to maintain and promote the quality of working life in the city. WIACT, as we call it for short, provides the public with information and referrals concerning employment problems, provides education to the public about employment rights and issues, conducts research, offers city council policy advice on employment issues and advocates for maintaining and improving the quality of working life in Toronto. WIACT is concerned most specifically with the most vulnerable workers in our city: non-union workers who are new Canadians, youth, low-paid workers, visible minority workers and women.

We agree with the government and with various employer groups who have come forward that Toronto, and the province as a whole, indeed, needs a healthy and vigorous economy. We also agree that the world of work has changed and the Employment Standards Act has stood still. So as you have said, we have to address how to have a healthy economy and how to modernize the act.

Developing a healthy economy is more than creating jobs. A healthy economy has enough jobs, but they are jobs that pay enough for people to make a living and to support their families in a decent manner. If the economy we are creating has everyone working part-time or part of the year or more hours for less pay or in minimum-wage jobs in personal and business services, we won't have the most liveable city in the world any more or the most liveable province. We'll be living in a polarized city and province of haves and have-nots. It matters what kind of employment we create. If people living in this city don't earn enough to purchase the goods and services we produce, we will not have a healthy economy.

The city of Toronto has always felt it has an important role to play in creating good jobs. Over a century ago, the city adopted a fair-wage policy for the employees of companies that do business with the city. Our official plan and other council policies clearly establish our commitment to creating a city where people can work at jobs which provide a wage or salary which allows them to afford to live here. Our work with local business improvement areas and the film industry, to give but two examples, is further evidence of the importance that successive councils have placed on improving the economic climate in Toronto.

Clearly, the responsibility to provide jobs that provide decent wages is one that is shared by all levels of government.

The greatest proportion of jobs created in the last 15 years are part-time, part-year, contract, temporary and self-employment, the kind of new work arrangements that we all agree the Employment Standards Act has to address. Some of these new jobs are great jobs, but many of them are bad jobs.

You all received copies of the Bad Boss Stories yesterday. A number of those stories were contributed by the Workers' Information and Action Centre. They give some pretty typical examples of these new jobs: telemarketing, for instance. They also show that these can

be bad jobs. You've also heard from garment workers who work at home, which are more bad jobs in the new economy. In the case of the garment industry, the new organization of the workplace is the same as the organization of the workplace at the turn of the century, with lots of the same working conditions and wages that are too much the same as they were then.

The first thing governments have to do to ensure that jobs in the new economy are good jobs, jobs that pay enough for people to support themselves and their families at a decent standard of living in Toronto and the rest of the province, the most basic thing we need is minimum employment standards and enforcement of those standards. Minimum standards are the bottom line for creating and maintaining decent jobs.

The city of Toronto also has an ongoing commitment to promoting equity for our residents and citizens in a number of different ways, including the Workers' Information and Action Centre. Like the minister, we have a particular interest in making sure that the most vulnerable workers have access to justice and access to decent jobs.

As you know, Toronto has a large proportion of Ontario's most vulnerable workers. We have most of Ontario's new Canadians. We have a large population of people who don't speak enough English to compete in the open job market. The big city is a magnet for unemployed youths from all over the GTA and the rest of the province. While most employers do more than meet employment standards, there are too many unscrupulous employers in our city who will take advantage of these vulnerable workers in a different time.

WIACT's focus is on assisting vulnerable workers. That's who our staff spend most of their time with. And employment standards is the law that our staff deals the most often with, both in answering public inquiries about employment rights and in educational presentations to groups of workers throughout the city. Our staff also answer public inquiries about other employment legislation and issues, and conduct education on other employment issues, but it's employment standards that we'll talk about today.

1550

In the first six months of this year, WIACT's staff answered over 2,000 inquiries from the public about the Employment Standards Act and made educational presentations to another 2,000 people about employment standards.

Every day, our staff talk to workers in this city whose employers are not meeting minimum employment standards from all sectors — retail, manufacturing, service and sales — and almost all are non-union employees. They call, as they say, to find out about their rights. Our staff explain the law to them and then explain the procedure for enforcing the law. That's what Bill 49 addresses and that's the experience we have that we wish to share with you.

It's a very frustrating experience to have to explain how ineffective the enforcement of the act has been. Most employees don't need anyone to tell them that if they file a complaint with the ministry, they will probably be fired. Many have seen their co-workers fired for doing so. Our

staff believe they have to be honest with people who call and so agree that is most often the case.

Employees also call expecting that someone can go and prevent a bad employer from breaking the law. For example, they think if they tell the ministry that company X is hiring 30 new people per week and then not paying them, the ministry can intervene and stop the company from doing that. Our staff have to explain to them that in fact the ministry cannot accomplish that.

Many others call and their paycheques have bounced. They want to know what they can do. It's pretty sad to tell them that they have to go and file a complaint, that someone will look into that complaint in six or eight months, conduct an investigation, write an order, wait to see if the employer pays and then finally refer the order to the wage protection fund. Knowing that you'll get a paycheque or two in a year or two will not pay the rent, or in the case of the recent story about the young people who worked at a children's summer camp, that cheque in a year or two's time won't pay this year's tuition fees.

Enforcement of the rights that do exist under the act is the primary issue for non-union workers. We've evaluated the proposals in the bill based on our experience, and would like to comment on a number of them.

The proposal that our staff identify as being the most detrimental to vulnerable workers is the six-month limitation on complaints and investigations. Most of the people who call cannot and will not gamble on losing their jobs. They'll put up with almost anything to keep even the most miserable job in order to support their families and stay off social assistance. They're calling to find out if someone can help them without endangering their job, and up until now, our staff have been able to explain to them that they don't have to give up their rights by not filing a complaint right away.

When they find another job, they can take their records to the ministry and apply for the money that's owed to them. With the two-year claim and investigation period, they don't have to choose between their jobs and their rights. If the claim period is shortened to six months, they're going to have to make that choice more frequently.

Other people who call simply didn't know what their rights were for some time. Our staff hope they don't end up telling people that they've lost their rights under the law because they didn't know what they were.

Other employees call who have given their employers the benefit of the doubt for several months, for instance, if their cheques have bounced. If the claim period is shortened to six months, as is proposed, we would have to advise them not to give their employers the benefit of the doubt at all and to proceed with the claim immediately.

From the point of view of employees who haven't received their due under the law, the better way to streamline the administration of the Employment Standards Act would be to shorten the ministry's investigation time to six months from two years, not the claim period.

The fact that employees can be fired for making a complaint under the act is a huge problem now and it will get even worse if the six-month limitation is brought in. We know the act says that employers can't take

reprisals, but it places no limits on terminating employees. It simply requires employers to give them notice or to pay in lieu of notice.

Ministry officials explain to us that non-union workers are never reinstated because they can be let go again the next day. So instead of reinstatement, non-union workers fired for exercising their rights under the act just get their pay in lieu of notice. That would most often be one or two weeks, which is not enough for one to give up one's job.

In order to offer real protection to workers for complaining under the act, there has to be a prohibition against terminating employees without just cause, particularly those who have made an ESA complaint. There are precedents under the Workers' Compensation Act for this kind of protection.

The other way the ministry could improve enforcement is to initiate a program of spot checks on employers and industries known to have past violations. There are a few employers who deliberately break the law and a few industries where we know that employers are more likely to violate employment standards, and we can document that. Your ministry staff know what industries these are and often what employers these are. So do our staff and others in the city. If the ministry had an active program of auditing these employers and quickly escalating penalties so that bad employers worried about getting caught, that would mean employees wouldn't have to risk their jobs to file complaints.

The other thing that vulnerable workers really would like to see is some way of stopping them from proceeding with their business if they continually violate the law. One example from our office is a fellow who called who was owed about \$8,000 in back wages, most of it from cheques that had bounced. Everybody in his workplace was owed money. This fellow quit and told the employer he'd file a complaint. The employer laughed and she said, "I'll declare bankruptcy before the ministry can contact me and then you'll get nothing." The others still working there were too scared to complain. He wants the ministry to go to that workplace now and ensure that he and the other workers get their pay before she makes good on her threat.

This brings us to the proposals in the bill that there be lower and upper limits on the amount that employees can claim. I'm not sure I know why someone would keep going into work when an employer owes them \$8,000, but if they do, the employer should have to pay up. They are owed for the work they've done.

When I think about some minimum claims, I think about students and minimum-wage earners. Minimum wage for a 40-hour week is \$275. That's a pretty small amount. I certainly hope you wouldn't consider telling minimum-wage earners that they can't claim a week's worth of pay or any portion of it. Then I think about students who work part-time. Maybe they only earn \$50 a week and they don't get paid for two weeks. Aren't they owed that money and aren't they entitled to some sort of enforcement of the law?

Finally, we want to address the proposal in the bill that unionized workers can contract out of minimum standards. I know the minister has deferred the consideration

of this proposal, but I do think it should be addressed. It's always been very important to staff of the city to explain that in Ontario you cannot sign away your rights. If the boss comes to you one day, or in order to get a job someone asks you to sign a paper that you're not really an employee but an independent business, for example, you can sign that paper, get the job and file a complaint later. It's the employer who is breaking the law. If unions and companies, and later individuals, are allowed to contract out of minimum standards, it is the vulnerable workers who will suffer.

In conclusion, the staff at our Workers' Information and Action Centre have a great deal of experience with the Employment Standards Act. We wish that we could have consulted with the minister before she introduced the bill about ways in which enforcement could be improved for vulnerable workers. We've got a lot of ideas, some of which I have presented today, but the proposals in the bill will not protect the most vulnerable workers. They will make it worse for people who are already the worst off.

Thank you very much. I'd be happy to answer any questions.

The Chair: Thank you, but with only 15 seconds left in our 15 minutes, I'm afraid there won't be time for questions. Thank you very much for taking the time to make a presentation before us today. We appreciate it.

CANADIAN AUTO WORKERS, LOCAL 222

The Chair: The next presentation will be from the Canadian Auto Workers, Local 222. Good afternoon. Welcome to the committee. Again, a reminder we have 15 minutes. Anybody who is going to be speaking, could they introduce themselves for the benefit of Hansard, please.

Mr Mike Shields: We are presenting this submission on behalf of the over 25,000 members of the Canadian Auto Workers union, Local 222, in Oshawa. In preparation of this brief, we found that Bill 49 was described in the Ministry of Labour press release as "facilitating administration and enforcement by reducing ambiguity, simplifying definitions and streamlining procedures." It is the view of the Canadian Auto Workers, Local 222, that the changes proposed in Bill 49 are being driven for purely ideological and fiscal reasons.

The changes as presented as minor technical amendments by the Mike Harris government contain very major changes. These changes clearly benefit employers while ignoring the rights of both organized and unorganized workers, particularly the most vulnerable in the workforce. The proposed changes will make it easier for employers to escape penalties where they violate basic standards and harder for the average working person in Ontario to enforce his or her rights.

1600

These amendments will also strip unionized workers of the historic floor of rights or minimum work standards which have existed under Ontario law for decades. Under Bill 49, basic standards will become additional items to be negotiated at the bargaining table.

Our local union roots started with the struggles in the late 1920s. Workers in Oshawa fought with General

Motors to improve working conditions in the union's first negotiated collective agreement in 1937. These struggles represent our role in the history of organized labour, along with other unions across the province that worked with government to create minimum work standards for all working people in Ontario. This base of industrial labour laws and regulations has been achieved through a broad consensus that exists in advanced industrial societies, inclusive of Canada and Ontario, that an effective, equitable floor of employment rights is not only feasible but also socially and economically beneficial.

Our union membership has battled on the picket lines for decent standards of pay and working conditions. These changes and improvements have been regarded as having a central part to play in reducing exploitation and poverty while encouraging a more effective use of working people's labour. Through the struggles and gains made by labour for all Ontarians, it is no small wonder that Canada has been named by the United Nations as the best place in the world to live.

The Mike Harris government has the view that legislated standards, regulations and the various other roles of government enforcement have caused a stranglehold to people doing business in Ontario. We do not believe for a minute that our current Employment Standards Act prevents businesses in Ontario from making necessary adjustments to changed economic circumstances and thus leads to reduced economic development and higher unemployment. This government is of the opinion that the costs of social services are excessive overhead costs that need to be offloaded to a lower level of government that can ill afford to maintain them, rather than acknowledge them, like the United Nations has, when it comes to the vital role of government programs for the long-term benefit of everyone. With Bill 49, we see the Mike Harris government offload good labour market policies on to individual workers and to unions to negotiate in collective agreements.

Flexible standards: The bill also allows a fundamental change to Ontario labour law by permitting the workplace parties to contract out important minimum standards. Prior to Bill 49, it was illegal for a collective agreement to have any provisions below the minimum standards set out in the Employment Standards Act, minimum standards that responsible governments in the past have established. Bill 49 allows a collective agreement to override the legal minimum standards concerning severance pay, overtime, public holidays, hours of work and vacation pay if the contract confers greater rights when those matters are assessed together.

We would like to remind the committee members that General Motors of Canada has been after the Ontario government to extend the workweek to 56 hours per week. This provision appears to give General Motors its request by allowing a negotiated change to the current legislated workweek.

We would hope that the committee members would think about the health and safety of any employee being asked to work for extended hours beyond what is the norm in the current Employment Standards Act. Can you imagine an employee in an auto assembly plant who works eight hours and has built 560 cars being told to

work for two more hours and build another 150 or more vehicles? This aging workforce must carry, lift and secure parts on a never-ending assembly line, which subjects them to injury, exhaustion, repetitive strain and constant stress. Consider the request for extended work hours, keeping in mind the workers' physical and mental wellbeing.

Let's look at the impact that increased work hours will have on a community where these employees live. In a time when governments are cutting back on services to people in need, our membership is continuing to build on the network for the social needs of the greater community. Our members currently volunteer at their church, the hospital, Girl Guides, Scouts, hospices, coach children's team activities, service clubs etc. The list has no end, until Bill 49.

For example, Gilles has worked at General Motors for over 17 years, and he currently spends approximately 16 to 20 hours per week coaching a local hockey team. He spends his valuable free time away from his place of work to provide quality coaching that these children would miss if he was unable to keep his level of time commitment. If his workweek was increased by 16 hours per week, he could not continue to coach the team.

Our members enjoy helping others during their time away from their workplace. Where does the government plan to find replacements for all the volunteers in the province currently working 40 hours per week? These changes could mean that a person currently providing hospice care to your dying parent or friend is gone and their client is sent to the hospital to die — not a good care choice for the client or the government in these fiscally challenging times.

At a time when we have record unemployment year after year, it makes absolutely no sense that a government would be telling employers to stop hiring people and get their current employees to work longer hours. Increased work hours will only lead to a smaller base population with full-time employment. How many new jobs will be created by this backward-thinking approach, not to mention future loss of productivity? What we have here is a government that is choosing who and how people will be allowed to participate in our community.

Never has a government made changes to the Employment Standards Act that would erode people's standard of living. The erosion of minimum entitlements will begin in many of the bargaining units where employees do not have sufficient bargaining strength to resist employers' demands. These changes eventually have an impact on the standard of living of all Ontarians.

Enforcement under a collective agreement: Today, all members of our local union or any unionized workers in Ontario have access to the considerable investigative and enforcement powers of the Ministry of Labour. We have found this inexpensive and a relatively speedy method of dealing with workplace closures and particularly issues such as severance and termination pay.

Plant closures are not new to our local union or Durham region. Houdialle is a good example of corporate downsizing without any regard for its employees. Back in 1980, when the company decided to close the Oshawa operations and move the business back to the United

States, they had no regard for their employees. Once the union found out that the majority of employees would be left without access to their pension or a decent minimal severance, it occupied the Oshawa plant. This occupation was the focus of media attention, and public support was very strong; a radical action for an intolerable situation.

Without the government offering this protection to all unionized employees in Ontario, unions will virtually have to negotiate the inclusion of the entire Employment Standards Act. The limited resources of small unions will ensure that there is no possible way that they can have the personnel trained to carry out the burden of investigation, not to mention enforcement. Even if the union carried out the investigation, any employee could still force it to arbitration, in which case, does the arbitrator have the investigative power of an employment standards officer? No.

It is our considered opinion that this section of the bill is being included only for fiscal reasons. The Harris government wants out of another area of enforcement. We do not believe that it is prudent for the government of Ontario to turn enforcement of public legislation into private hands.

Enforcement for non-unionized employees: With these sections of the bill, the government is planning on walking away from its responsibilities of enforcement and telling an employee to resolve it in the courts. The minimum standards that working people in Ontario have relied on have now been left up to the individual to enforce. These are dollars owed to the employee, and this amendment will force them to try to recover all their money through the courts or to take this new statutory minimum. For the employees, who are clearly held up for ransom, the choice is to spend money, that they likely don't have, on a lengthy civil action or to forgive some of their entitlement under the Employment Standards Act. We feel this is simply more downloading, and in this example you are picking on the employee who can least afford it.

With regard to maximum claims, with this amendment we are seeing a maximum amount an employee may recover under the act limited to \$10,000. We would like the committee members to understand that this amount is owing back wages and other moneys such as severance, termination pay and even vacation pay. By putting a cap in place, we feel that the government is going to encourage the worst employer to violate a basic minimum work standard. Every employee in Ontario, whether he or she is a garment worker, domestic or in food services, is entitled to fair and just compensation in a reasonable time frame for their hours worked.

1610

The bill also gives the government the right to set down a minimum amount to be set by regulation. We would like the government to tell us what it sees as the minimum amount. Will an employee owed one day's or one week's pay be told, "Hire a lawyer; we won't help you"? Who can these employees complain to when the government turns its back on them?

Use of private collectors: These proposed amendments are clearly just another example of the government in a hurry to privatize; in this case, the collection function of

the employment standards branch within the Ministry of Labour. The ministry doesn't have the best track record when it comes to collection, so instead of dealing with the problem, the minister is walking away from it. If the government of Ontario can't get an employer to pay back wages owed, how does it expect a private collection agency to succeed?

Let's look at an example of a minimum-wage worker who earns \$6.85 per hour. If she has to hire a collection agency to reclaim wages owed from a bad employer, she may only see 75% of her money owed. What will stop the collection agency from discounting the moneys owed simply to get a quick settlement? If the employers find that they can discount moneys owed, obviously they change their business practices, which encourages them to continue to violate minimum standards. This clearly shows that the government is walking away from another person living near the poverty line.

Limitation periods: The proposed amendments in Bill 49 significantly change a number of time periods in the act. This change appears to place a vulnerable worker, who often finds it necessary to file after quitting or having changed employers, at further disadvantage. These new time limits may force the employee to choose the courts for compensation, and we realize that your government has already scaled back the Ontario legal aid plan so that employment-related cases are no longer covered.

There are several positive amendments in Bill 49. Entitlement to vacation pay is one of the few amendments in Bill 49 that our membership at CAW Local 222 can support. With the inclusion of this amendment, the act will clearly provide that the vacation entitlement of two weeks per year will accrue whether or not the employee actively worked all of this period or was absent due to illness or leave. The amendments to seniority and service during pregnancy and parental leave ensure that all employees are credited with benefits and seniority while on such leaves. With the passage of this amendment, the length of an employee's time on leave will be included in calculating length of employment, length of service or seniority for purposes of determining rights under a collective agreement or contract of employment.

In closing, our comments today on the main elements of Bill 49, we feel that you have failed to address some of the most serious problems facing working people today. For this piece of legislation to be presented as a minor housekeeping bill is a shameful use of the English language. This bill appears to be a direct attack on the minimum working standards of the employees of Ontario as related to severance pay, overtime pay, hours of work and public holidays.

We feel that this bill was written to erode the minimum standards of working people not fortunate to have a negotiated agreement and will make collective bargaining more difficult. At a time when we are fighting greedy corporations like General Motors on issues of contracting out, we have a government that has brought in outsourcing as a way to solve a revenue problem. This bill is clearly part of the Mike Harris plan to walk away from the government's role in enforcement as a means to pay for the tax break for the wealthy.

The Chair: I didn't want to cut you off, but we've gone over the 15 minutes. Thank you very much for taking the time to come before us and make a presentation here today.

Mr Shields: Mr Chair, I would like to introduce myself. I believe on the original program it had Larry O'Connor down. My name is Mike Shields, president. I did have Bill Mutimer on my right, Larry O'Connor and Jim Freeman.

POWER WORKERS' UNION

The Chair: That now leads us to our next presentation, which will be from the Power Workers' Union. Good afternoon. Welcome to the committee. Good to see you again. We have 15 minutes for you to divide as you see fit between either presentation or questions and answers.

Mr John Murphy: We certainly appreciate this opportunity. I'd just like to introduce who is with me. We have Chris Dassios who's our legal counsel for the Power Workers' Union, and we have Bob Menard who's with our communications department in the Power Workers'.

I think everybody has copies of the brief that we've prepared. I'll try to go through as quickly as I can the key points that we've outlined in our brief and hopefully they'll be of assistance in terms of considering the recommendations around the Employment Standards Act changes.

Let me start with just a quick overview of the Power Workers' Union. We represent approximately 15,000 employees in the power sector in Ontario. The roots of the Power Workers' Union go back to about 1944. The Power Workers' Union was one of the founding members of the Canadian Union of Public Employees, Canada's largest union, and continues its affiliation with CUPE, the Canadian Labour Congress, the Ontario Federation of Labour and nearly 40 local labour councils throughout Ontario.

I'm the president of the Power Workers' Union since 1993 and also vice-president of the Ontario Federation of Labour and a member of the board of directors of Ontario Hydro.

The PWU is greatly concerned with the substance of the Employment Standards Improvement Act, 1996. What the government has called minor technical amendments cannot be viewed as merely technical matters by the PWU, its members or indeed any employee in the province. The effect of the proposed changes is to sacrifice the rights of employees in the province and to make it more difficult for employees to enforce the rights they have against unscrupulous employers.

Now I'll go through what we consider our main areas of concern.

First is what we call the privatization of enforcement in a collective agreement context. Currently, all employees in the province have access to the offices of the Ministry of Labour to enforce the standards set out in the Employment Standards Act. The bill proposes to prohibit anyone in a unionized workplace from having access to a publicly funded enforcement mechanism under the Employment Standards Act. This is a flagrant

discrimination against unionized employees. It also prohibits a certain segment of the taxpaying public from having access to publicly funded enforcement mechanisms under the act. If the standards in the act are truly minimum standards, they should be enforceable in a like manner in respect of all employees in the province.

Arbitration is not a substitute for a complaint under the Employment Standards Act because there is no investigative component by a neutral third party in the arbitration process. The effect of the proposed amendment is to simply privatize the enforcement of the act and make employers and unions pay for such enforcement in organized workplaces. In the past, a union's duty of fair representation has not required a union to represent employees in respect of employment standards. The proposed changes would expose unions to a duty of fair representation complaints in respect of enforcement of a public statute and transfer the cost of enforcing the public statute to the trade union movement for no good reason. If cost savings need to be made, they should be made in an evenhanded manner and not in a manner which punishes a certain segment of the workforce disproportionately.

The second point we'd like to make focuses on the limitation of avenues of enforcement by non-unionized employees. The Ministry of Labour is proposing that enforcement of any provisions of the Employment Standards Act be ended where such enforcement can be resolved by the courts. Furthermore, the amount recoverable will be limited to \$10,000. Bill 49 also gives the minister the right to set out a minimum amount for a claim through regulation, which would result in employees being prohibited from filing a complaint or having an investigation in respect of a claim below the minimum amount.

The net effect of the proposal is that employees with claims exceeding \$10,000, who are usually the most powerless employees, harmed the most at the hands of unscrupulous employers, will be forced to go through a court system which requires them to hire a lawyer and expend large sums of money in the hope of obtaining some recovery months or years down the line. On the other hand, employees who have suffered less harm will be able to have access to a publicly funded and more expeditious enforcement mechanism under the act. It makes no sense to discriminate against those who have been most harmed. The message being sent to unscrupulous employers is that if they are going to violate the Employment Standards Act, do it to the greatest extent possible so that, to obtain full recovery, their victims will be forced into the court system where enforcement is much more expensive and less likely to succeed as a result of the expensive delay involved. Surely this cannot be consistent with a reasonable public policy.

1620

Furthermore, employees with small claims will not have access to the enforcement mechanisms under the act, which will simply mean that their claims will essentially be unenforceable because it will not be worth hiring a lawyer and entering the court system in order to enforce their rights. Again, if the ministry is serious about having

the Employment Standards Act enforced, it is hard to understand why it would implement the proposed policy.

The third section deals with privatization of collection. The proposed amendments would give private operators the power to collect amounts owing under the Employment Standards Act. In effect, the ministry is proposing to deal with the problem of employers who do not pay not by bolstering the ministry's enforcement efforts but by contracting out the enforcement work to a private agency that will charge a fee for enforcement. Anyone who has had any experience with private collection agencies knows that their prime objective is to obtain a quick settlement, even if that means taking a substantial amount less than what is owed as a settlement. Although the proposal is that, where a settlement is under 75% of the amount owing, the collector is required to obtain the approval of the director, there would still be a wide scope for abuse by private collectors. The spectre of a collector telling an employee who has a legal right to compensation that they should take an amount lower than what they are entitled to or the collector will simply give up on their case is truly frightening.

Even after the employee has been found to have a legal right to compensation from an employer, they will not be able to fully exercise that right until they have finished dealing with a for-profit private entity in respect of obtaining satisfaction. The private collector's objective will not be identical to those of the employee or indeed those of the public. The profit motive will be paramount and that will put the collection in direct conflict with the interests of the employee.

The net effect of this will be that employees will receive less than the amounts to which they are entitled under the act. The money will be put into the hands of the collection agencies which, we would submit, are less in need of the funds than the employees who are seeking to have the act enforced. Furthermore, the greatest pressure will be exercised on the most vulnerable, which again will result in the most needy employees getting the least amount of satisfaction under the act.

In the end, the proposed amendment in this area will be sending a message to employers that it would be most cost-efficient for them to simply ignore the Employment Standards Act. Even if an employee has the temerity to litigate the issue and an order is made against the employer, the employer will simply pay off the amount owing to a collection agency at a discount that may be well below the actual amount the employer would have had to pay if he had to comply with the act in the first place. This would make a mockery of the minimum standards protection that has been part of the fabric of this province for decades.

The fourth section deals with limitation periods. A six-month limitation is being imposed in place of the current two-year period. As the ministry knows, limitation periods in the employment standards context are of a different character than those of general law. Employees who cannot find alternative employment often have to live with violations of the Employment Standards Act until they can find another job. Thus, a two-year limitation period is realistic. Those employees who have the worst prospects for alternative employment will be forced

into a court system which is more expensive and less likely to result in a proper enforcement of the act due to the cost and delay of the court proceedings. Once again, the most vulnerable employees will have the least chance of effectively enforcing the act.

The six-month period contrasts with the two years the ministry is given to conduct its investigation and the two years the ministry is given to get the employer to pay moneys owing. So while the employee has only six months to file a complaint, it can take four years for the matter to be concluded. If the government is truly interested in streamlining the process, why do it on the backs of the employees as opposed to getting the ministry's house in order?

Our conclusion: We have set out above our main concerns with the proposed amendments. The essence of Bill 49 is to make substantive amendments to the Employment Standards Act which discriminate in both purpose and effect against unionized employees and the most vulnerable employees in the non-unionized sector. The proposed amendments are not mere housekeeping but a dramatic watering down of the minimum standards that have been accepted by all persons in the province as fair and equitable for many years.

The purpose and importance of labour law, as set out in a statement adopted by the Supreme Court of Canada — and maybe I'll go right to the statement — says: "The main objective of labour law has always been, and we venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship. Most of what we call protective legislation...must be seen in this context. It is an attempt to infuse law into a relation of command and subordination."

Seen in this context, the proposals to amend the Employment Standards Act weaken the protections in the act and increase the subordination of employees who are already in a subordinate position. This sort of activity can hardly be deemed action for the public interest.

The amendments set out above are simply unacceptable to the Power Workers' Union and, we would submit, to the vast majority of working persons in this province. The Ministry of Labour should reconsider these amendments immediately. All of which is respectfully submitted on behalf of the our 15,000 members of the Power Workers' Union.

The Chair: Thank you, Mr Murphy. That leaves us a minute, but I'll give 20 or 30 seconds to each caucus. The questioning or comment will commence with the official opposition.

Mr Hoy: Thank you very much for your presentation. It's a very comprehensive one. It's unfortunate we don't have more time, but I'd just make a comment that we see the government withdrawing from enforcement in more areas than just employment standards and labour laws. It seems they have the notion that two parties in dispute can solve this themselves, and I've had representations made to me in other areas, including labour, that third parties are required. I just simply state that the government is in this mode currently.

Mr Christopherson: Thanks very much, John, for your presentation. We don't have a lot of time to get into

what you've raised but you've certainly done, as always, an effective job of focusing in on the issues that matter.

I think what's really important is that you've joined a long list of important, well-known, respected labour leaders and community leaders all across Ontario who, when we finally forced this government into bringing this bill out into the light of public scrutiny, have pointed out that it's detrimental not just to union members but, more importantly, to the most vulnerable, those who don't have benefit of a union. I think it says a lot about you and your union and the rest of the labour movement that you come forward and put your reputation on the line and, quite frankly, take on this government when it continues to say that this is good news for working people and that this improves the Employment Standards Act when the reality is it's just one more piece of a litany of attacks on working people since they've taken power. I want to thank you for being here.

Mr Tascona: Thank you for your presentation. I'd like to just make a few comments. Certainly I understand your position with respect to the minimum claim. I certainly can share that in terms of setting up a principle of saying that we're not going to tolerate any employer getting a free ride with respect to enforcement under the act, and certainly I think that the government is serious about having the Employment Standards Act enforced. In that regard, certainly the consensus we're hearing is that there's a need for improving the enforcement under the act. I guess the approach that's being taken is that the government resources are being shifted towards the non-union workers who don't have the benefit of having representations such as a strong union like yourself.

1630

But at the same time, section 20, which you comment on, there have been positions that have been taken, but that will be something that will benefit the parties. What we heard this morning from another distinguished labour lawyer, including the one you have with you, David Brady indicated that he felt the changes under section 20 would result in greater self-reliance in the workplace parties and improvement in the enforcement of the standards for employees; in other words, internalizing and making the workplace parties look after their problems, because they have a collective agreement and the process —

The Chair: If there's a question, could you move very quickly to it, Mr Tascona.

Mr Tascona: That's basically it. Do you have a comment on that?

Mr Murphy: Okay, just a quick comment and maybe if there's time permitting, I'll get Chris to make a quick comment as well on it. I think the basic premise that we're coming from is that yes, there are different strengths. If we look at the unionized environment, there are different strengths. But the reality is, in any workplace — and as a union leader, I am the first to admit this — the strength that a union has doesn't compare with the strength that an employer has.

Now, if we look right across the unionized structure within the province of Ontario, we go from what can be sort of strong unions to very weak unions. Our argument is that if the government determines that the people of

this province should have a minimum standard, that minimum standard should be enforceable right across, regardless of the strength of the bargaining unit that you happen to be within, if you happen to be in a unionized structure.

Right now we have a situation in this province where in particular public sector unions are under increasing pressure in terms of a multitude of issues that they have to deal with in the collective bargaining context. To add these issues into that mix, the net result will be that people would not get what they would otherwise get under the statute in terms of minimum standards enforceable by the province.

The Chair: Thank you. I'm afraid, Mr Murphy, we're already over 18 minutes, so in deference to the three groups that are still left to appear before us, thank you very much for taking the time to appear before us today.

Mr Murphy: We appreciate the opportunity. Thank you.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204

The Chair: The committee may amend its agenda. We've had a last-minute cancellation from the Labourers' International Union of North America, Local 597, which means our next group up is the Service Employees International Union, Local 204. Good afternoon. Welcome to the committee. Again, there are 15 minutes available for you to divide as you see fit.

Ms Judy Christou: Mr Chair and committee members, Service Employees International Union, Local 204 welcomes this opportunity to present our submission concerning Bill 49 regarding the changes to the Employment Standards Act. Although granted reluctantly, we would appreciate more such opportunities to consult with this government.

First, I would like to give you some background on this union and this local, and our interest in the Employment Standards Act will become self-evident. SEIU represents approximately 45,000 workers across Ontario; of those, 27,000 are employed in hospitals and 11,000 workers are employed in nursing homes and homes for the aged. These members are covered by the Hospital Labour Disputes Arbitration Act and do not have the right to strike.

We also represent private sector workers such as cemetery, racetrack and day care workers, hairdressers, waiters and waitresses, maintenance and cleaning staff. SEIU has a slogan, "We care for you from the cradle to the grave," and it's true. Our members are the ones who look after your parents and your children and you when you become ill. It is in your best interests to protect these people.

Local 204 is the largest local of SEIU in Canada, representing 20,000 workers. Further, an estimated 85% of SEIU members are women, a significant number are from minority groups, many work part-time and all these workers are concentrated at the lower end of the economic scale. They have already suffered through the repeal of employment equity and part of the pay equity legislation.

They face cutbacks in day care, both as workers and consumers. On an ongoing basis, our health care members must deal with the funding cuts, not knowing whether they will have a job from one day to the next, and if they are lucky enough to have one, they are sadly, overworked. The Employment Standards Act has protected all these workers at some point in their working lives.

Bill 49 is titled An Act to improve the Employment Standards Act, but there is no improvement here except perhaps for employers who wish to take advantage of the workers they employ. When the bill was introduced, the Minister of Labour claimed that the amendments would cut through years of accumulated red tape, encourage the workplace parties to be more self-reliant and allow the ministry to focus attention on helping the most vulnerable workers. Instead, we are faced with the possible gutting of this bill of rights for workers.

The Employment Standards Act is just that, legislation to set minimum working standards for the people of Ontario. The act has evolved out of years of exploitation of workers which previous governments have responded to. It has developed with the moral, historical and cultural support of the people of Ontario.

In her brief, Professor Judy Fudge outlined the historical development of the law from the 19th century culminating in 1968 with the Employment Standards Act. What makes this government assume employers have changed since the 19th century or that protection of workers is no longer necessary? The employment standards branch receives roughly one million inquiries a year and nearly 20,000 formal complaints alleging violations of the act.

In a one-year period, over \$75 million in back wages owing was assessed against Ontario employers who failed to meet the minimum standards provided in the act. This simply demonstrates this legislation is highly necessary and the process is heavily utilized. Over 90% of complaints filed are by workers who no longer work for the employer they complain about. It seems fairly obvious only employees who have terminated their employment feel comfortable laying a complaint. This does not say much for the ability of employers to self-regulate.

One of the goals of the legislation, as stated by the minister, is flexibility. Flexibility is a polite way of saying employers want to do anything they desire in the name of the mighty dollar. Employers have always wanted flexibility, and indeed we unions are willing to give it to them as long as they meet decent, reasonable standards and/or the requirements of a collective agreement. The minister said also that unions were entitled to flexibility. Well, our members want the flexibility to earn a decent wage, work reasonable hours, take a vacation and enjoy holidays such as Canada Day with their families. This minimum standard is a signature of Canadian life.

Even with the current minimum protections workers have, some employers will go out of their way to avoid the laws, as you are aware from reports of the OFL hotline. A case in point is the Local 204 retirement home which, in the name of flexibility, scheduled its employees on split shifts, with the result of no rest breaks or lunch-hours. An employee could be required to work from 7 am

to 10:30 am and then from 4:30 pm to 7:30 pm. It is hard to imagine a situation more disruptive to one's life. How could a parent, for example, arrange day care for such a schedule, thus avoiding the financial and emotional burden of leaving a child for 12 hours?

Another small nursing home we have has a consistent problem with bouncing paycheques. Our members live from hand to mouth. If their paycheques bounce, they have no recourse and, as a result, they face increased bank charges, mortgage penalties, car insurance problems and on and on.

Many thoughtful and insightful briefs illustrating the deleterious effects these amendments will have on working people have been presented to this committee. We heartily endorse the brief presented by the Ontario Federation of Labour on behalf of its affiliates.

We are aware the amendment on the so-called flexible standards has been withdrawn, but there is no guarantee it won't be raised again during the second phase. Given that we don't know if we will get another opportunity, we will persist in making our opinions known on this issue.

Local 204 prefers a minimum standard as set out in legislation and will forgo the opportunity to negotiate below those standards. The employers we deal with would undoubtedly bring such issues to the table. This union will not concur voluntarily to such requests, but more issues on the table will only add to the logjam characterizing health care bargaining.

Health care bargaining has always been difficult. A centrally negotiated collective agreement has not been negotiated in the Ontario hospital sector in years; for SEIU, the time period is close to two decades. With hospital restructuring and funding cutbacks, the parties have enough to deal with at the bargaining table without extra issues.

Problematic too is the fact that no criteria were given as to how the parties are supposed to judge whether the overall package negotiated is comparable to the package of standards legislated in the Employment Standards Act. As Professor Fudge put it, "This suggests that the purpose of this provision is to allow employees to waive minimum standards rather than to negotiate greater flexibility in achieving minimum standards."

Local 204 maintains we have already had experience in negotiating a similar concept. When we bargain centrally, some homes or hospitals have conditions superior to those of the central provisions. The union has always attempted to preserve these superior provisions at the bargaining table. Needless to say, these negotiations have been a struggle, as the employer never wishes to preserve superior conditions and often we are in dispute as to what is in fact superior. Given our experience with this concept, we have no desire to increase the number of issues that must be determined superior either in whole or in part. Even when we do evaluate superior conditions in this venue, at least we are comparing similar benefits.

This amendment would have required the parties to compare unrelated benefits, which is impractical and unfair. This suggested amendment, among others, would make negotiations more fractious, prolonged and complicated — just the opposite of what this government claims are its goals.

1640

Ms Joy Klopp: My name is Joy Klopp. I'm going to speak briefly to the enforcement section of our brief. I'm not going to read it. You've got it before you. I just want to flesh it out a little bit because there was a question about strong unions versus weak unions and who can enforce these provisions. I just want to make it clear that there are enormous practical difficulties with this, whether you are a weak or a strong union.

The first point I want to make is the general point that I've heard two prior speakers make, which is that these are minimum standards. They should be enforced across the board in an evenhanded way. That means that unionized and non-unionized employees should have access to the same public machinery to enforce their rights. That's the first point.

Now the practical difficulties. First, section 20 of Bill 49 would add enormous pressure on an already overburdened grievance and arbitration system. That's likely to be especially true where the employer is violating minimum standards.

I'm a business agent for Local 204. That means that I represent employees in part by pursuing grievances in the arbitration system. In my experience, where an employer is violating basic minimum standards, there is going to be a whole host of collective agreement issues that are a problem as well. You can have in a facility like that 20, 30 or 50 grievances pending at any one time; if that includes employment standards grievances, there are going to be delays; there's no avoiding it. If unionized employees had access to the public machinery, they'd have access to a potentially more efficient system to get those grievances resolved.

There's also a second problem, and that's priorities. Which claims go to arbitration first? Do we send ESA claims to arbitration first? Do we send them as individual claims so that we've got maybe 30 notice claims going to arbitration at once or do we send them as a group? If we send them as a group, are these individuals going to get their due with respect to these very basic statutory rights before an arbitrator?

The third practical problem is the cost factor. Nobody wants to quite address this directly, but it's extremely expensive to go to arbitration. We pay for half of the arbitrator's cost, the room, the travel cost, the counsel in most circumstances. In the context of our sector, where we've had layoffs due to nursing home funding changes, we've had hospital closures, there's a major financial constraint on health care sector unions in any event.

The fourth practical concern is that Bill 49 does not give unions or unionized employees the investigatory powers that ministry officials have. In section 63 of the act, ministry officials, ESOs, can go in, look at audit records, look at books of account etc. No such powers are given to a business agent. I can't go to the employer and say, "Give me all of your payroll records for the last six months." That's especially critical where we have newly certified bargaining units where we haven't been there and haven't seen the practice. The union may be able to ask for those kinds of records through an arbitration, but I have to have a case to get to arbitration.

Also, I want to note as an aside that there's no support in Bill 49 for the union's role in this. There's no training, there's no access to solicitors' opinions from the ministry, no special access. In fact, access even to the jurisprudence is difficult. They're not readily available like labour arbitration cases where you can just go to the library and look them up in the bound volumes that are well indexed. These are cases that are kept in the Ministry of Labour libraries and three mornings a week we have access to them.

Consistency of result is a very serious problem. The employment standards office and appeals tribunals have access, again, to their own policies, to their decisions, to their historical knowledge of their own jurisprudence. Arbitrators will be deciding these cases without the benefit of this support. We can end up with inconsistent decisions — in fact, I would suggest that we will end up with inconsistent decisions — as between arbitral jurisprudence on behalf of unionized employees and ministry jurisprudence with respect to non-unionized employees.

There also may be in fact inconsistent decisions within one workplace. If there are numerous violations in one workplace, in order to expedite proceedings, we may have to send them to several different arbitrators. Several different arbitrators can decide several different ways on the same subject. Obviously they try not to, but the cases are coming out. It's new law. It can happen. In Local 204's view, it's totally inappropriate to have inconsistent results where you have basic minimum standards that are supposed to evenly applied.

The Chair: Excuse me, Ms Klopp, not to interrupt, but we're at our time. If you have any closing comments, I'll entertain those now.

Ms Klopp: I better let Judy then go ahead.

Ms Christou: We'd just ask you then to look over the remaining issues in our brief.

In conclusion, SEIU Local 204 maintains that the direction the government is taking with regard to the Employment Standards Act is wrong. The argument that these amendments will focus ministry attention on helping the most vulnerable workers is false. The most vulnerable workers are in fact having the rug pulled out from under them by their own government.

If you consider the number of assessments made against employers in the 1994-95 period, 29% went uncollected, and when the actual dollar amount is looked at, 74% went uncollected. The most frequent reason given for the ministry's failure to collect wages was the employer's refusal to pay. There is a problem here, but it isn't with the worker. The ability of the employer to self-regulate is seriously called into question.

That concludes our comments, respectfully submitted by SEIU Local 240.

The Chair: Thank you both very much for taking the time to make a presentation before us here today.

That leads us to the next presenter. Is Gerard van Deelen here? As we had that cancellation at 4:30, he may still arrive at 5.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183

The Chair: I believe the Labourers' International Union of North America, Local 183, is present. Welcome to the committee. Just a reminder, we have 15 minutes for you to use as you see fit, divided between either presentation time or question-and-answer period. With that, the floor is yours.

Mr Keith Cooper: My name is Keith Cooper. I'm appearing on behalf of the Labourers' International Union of North America, Local 183.

The Labourers' International Union of North America, Local 183, is the largest construction local in North America. We represent nearly 15,000 members and their families, predominantly in the Metropolitan Toronto area but extending north to include Simcoe county as well. Our members perform work in all sectors of the economy. We represent not only construction workers but cleaning, maintenance, factory and countless other workers also.

This diversity allows Local 183 a close look at how employment standards are presently being observed and enforced. Although the present enforcement system is not perfect, it does work. Indeed, it has benefited thousands of employees who have obtained their legal entitlement without having to resort to high-cost legal counsel, which quite often would have been too expensive for those very persons to afford.

This and other enforcement issues will be addressed later by Mr O'Brien. As countless others have submitted point-by-point analyses of the proposed bill, the first part of our submission will instead take a more broad-based approach.

1650

As it presently stands, observance of the Employment Standards Act by employers is fast becoming more of the exception than the rule in many sectors. Every week, reports of unpaid vacation pay, missing or shortchanged hours, endless overtime and a host of other ESA abuses cross the desks of our representatives.

Usually those workers who are most affected by employer dishonesty are those found working in the lowest wage bracket. For all non-unionized and for many unionized workers in this category, the ESA is their best, if not only, recourse. Most workers earning minimum wage depend on every dime every week to continue their existence. Even in a unionized situation the inevitable delay caused by the conducting of interviews, gathering of evidence and appointment of an arbitrator may well add up to several months. This is time a low-wage earner simply does not have.

Section 20 of the proposed bill will deprive unionized members of this avenue, which at best is discriminatory and at worst disastrous. Landlords, banks, utility companies and other creditors will not extend an unspecified grace period for payment while a worker fights their way through grievance arbitration. Additionally, quite often the amounts of money in dispute are such that proceeding with arbitration is simply not cost-effective. In this instance, the affected worker may be left with no remedy at all.

Pawning a public responsibility to a private union is not common sense, particularly when not all of the public loses its rights. More importantly, the powers enjoyed by an employment standards officer are not the same as those at the disposal of a union representative. This disparity is evidence of further discrimination against union members.

Just as alarming as this obvious injustice is the apparent lack of thought and coordination being given to the reform itself. The legal ambiguities contained in the bill are various and open to interpretation in so many ways that, after examination, one cannot be even reasonably certain of what the proposed changes will eventually mean. In all likelihood, the end result of these uncertainties would be increased litigation at an understaffed labour relations board.

Low-wage earners, organized or not, are hit in other ways with Bill 49. For the reasons stated, these workers cannot live other than paycheque to paycheque. Being denied the right to pursue both an ESA claim and civil action, tied together with the proposed maximum dollar limit, six-month limitation period and minimum dollar limit could easily ruin the lives of thousands of families. With this lattice in place, a low-wage worker is virtually blocked no matter what their particular situation. If the worker is a long-service employee, they may be entitled to significantly more than is required under the act, yet will not be able to afford to await the outcome of a civil trial. An employee who needs every penny to survive usually doesn't argue with their boss.

A case in point is a recently organized bargaining unit at our local. In this instance, it was discovered that many employees were owed vacation pay dating back two years. Their employer regularly dropped hours from their paycheque without valid cause. Under the changes mentioned, these workers would have to choose between accepting a maximum amount, thereby losing money, or going to court, thereby losing money. It certainly does not appear to be an easy choice.

The concept of a minimum claim amount for wages is nothing short of insulting. To place a cut-rate pricetag on someone's life is disturbing. To a young mother who needs the money to buy formula, there is no minimum amount she would overlook. To a family which needs money to pay the rent, there is no sum too small. With the cutbacks in social assistance, the WCB, unemployment insurance and other support programs, every employment dollar takes on added significance. If the stated aim of this ubiquitous government restructuring, that is, to allow the poor to improve their lives through work, is true, then this bill should strengthen the sections dealing with the standards and options which would most affect this class. Instead, what emerges is yet another attempt at undercutting the very people who can least afford it.

As witnessed daily in the workplace, many employers are not presently observing the standards and are circumventing the legislation whenever possible. For this reason alone, any changes to the ESA should support greater enforcement and better standards, not the opposite.

Although subsection 3(3) has been temporarily withdrawn, the inevitability of its future reappearance leaves

it a topic for discussion. Contracting out of minimum standards is, stated simply, dangerous. The proposed system is fraught with inconsistencies, uncertainties and an apparent lack of regard for most workers.

With the workplace reality now being one of endless hours, stress and tension for many employees, the minimum standards now in place are of little comfort. To allow an employer to trade one right for another is, again, discriminatory to the unionized worker. If, as was suggested by the labour minister at the outset of this bill, these tradeoffs become applicable to non-unionized employees, employment chaos will follow.

To address this point for a moment, imagine an average retail store clerk refusing to work overtime in exchange for an extra week of severance pay. The outcome? The clerk is fired, has no recourse via the ESA and may not be entitled to unemployment insurance. It would be difficult to characterize this as an improvement.

In its form as set out in Bill 49, this balancing act is decidedly lopsided. If the proposals seen thus far are resurrected in the fall, it will inevitably lead to an increase in labour conflict, confrontation and job action. If nothing else, the ability to bargain over basic rights adds one more strain to the always delicate give and take of contract negotiations. Unfortunately, the impact of these plans will be much greater.

In construction, at least in Canada, the weather governs your year. Many contractors would echo the government's assertion that these changes to the ESA will increase workplace flexibility. They would point to their need for more hours in a workday or week to take advantage of good weather. Even now, constant enforcement is required to ensure the contractors do not work their employees beyond accepted limits. With the ability to bargain for those additional hours, an otherwise standard set of negotiations would take a new turn. Add to this the other changes to the act precluding unionized workers from making claims directly to the ministry and the entire union management dynamic is disturbed. Would any worker wish to work 20 hours of overtime a week in exchange for some improved benefit which they may never use?

These provisions have been characterized as a race to the bottom for employers intent on taking maximum advantage of their workforce. The irony is this government seems to believe that taking maximum advantage of their workforce is the newest corporate euphemism for success. This belief is neither new nor successful. It was the exploitation of workers a century ago that ultimately led to riots, strikes and terrorism. This cannot be deemed success by business or government.

From a social perspective, it can be seen in no other way than dangerous — dangerous because those who feel that society shuns them will, in turn, shun society. This will create significant numbers of dispossessed persons who will have little regard for legislation, authority and the sanctity of conventional business wisdom. Add to these numbers a sizable group of workers who feel they are under constant attack and you have the recipe for civil unrest. Pushed far enough, certain confrontations will undoubtedly turn violent.

This is not a future any should envision, yet every day it becomes increasingly probable. Bill 49 is designed to facilitate that future, whether purposely or not. It will have the greatest negative impact on those who are even now dangling by a thread. More importantly, however, it will affect in some unfortunate way the majority of Ontario workers and, by extension, their families. The effect of this bill does not stand in isolation from society but rather it interacts in countless ways, visible and invisible.

Disable minimum standards and weaken workers' rights and you increase the working poor and doom the disadvantaged. Not to be alarmist, but at some point in time a critical mass of working and non-working poor will be achieved and the inevitable violent explosion will occur. Riots and bombings in Canada have not accompanied most major policy shifts, but in recent years scenes more common to our southern neighbours have played themselves out from coast to coast. Right here at this building, in this year, Canadians witnessed a scene which would have hitherto been thought impossible. These are indicators that the lack of workplace stability is manifesting itself in many different ways. It also indicates where that instability is ultimately headed: to a violent clash of some kind between economic classes.

Despite the common assumption in government and business that this is overstating the case and preaching doom and gloom, any examination of the reality of the 1990s workplace and a changing society cannot avoid reaching this conclusion. The irony of the present situation is that what is needed to improve our economy and its competitiveness — namely increased productivity, consumer spending and smooth labour relations — is being undermined by a piece of legislation claiming to do the opposite. If this act is new and improved, most Ontario workers will live with the old and flawed.

Mr Michael O'Brien: The focus of my presentation will be on the diminishing capacity of the Employment Standards Act to recover lost wages by workers in both the construction industry and every other industry within the working force of Ontario.

The employee wage protection program was set up at the ESA to work in conjunction with the Construction Lien Act for the recovery of funds due to bankruptcies and delinquent or deadbeat employers. Present practices of the Employment Standards Act make it necessary to have a valid lien and commence an action for lien recovery to be in place before the EWPP will kick in. However, with the new legislation, the government sees fit to force the employee to make the choice of either choosing one route or the other: either having the EWPP pay out a claim on behalf of each worker to the amount of \$2,000, which is not guaranteed, or to have the Construction Lien Act be pursued in the event that you can recover the full amount. The position is much better for the employee.

1700

However, there are underlying circumstances which are not known at the time when you have to make this election of choice. Revenue Canada could step in at any time and make a third-party demand for the recovery of GST and source deductions, at which time the pool of

holdbacks, as they will be, at the payor, would be depleted insurmountably. The amount for recovery would be left at basically nil. With present practices being what they are, the EWPP would have kicked in and would have facilitated the recovery of the funds to the employees. However, when you have to make this election or choice, as it may be, of choosing the Construction Lien Act or the EWPP, you're not given that ultimate choice should the situation arise.

Notwithstanding the fact that this would basically erode the rights of the employees to recover their funds, it's also becoming or making a lengthy and expensive recovery process for both the employees and for the unions.

Presently the EWPP does not require, when in conjunction with a lien, for the union to have an order by an adjudicator or an arbitrator to validate their entitlement to wages. However, under the new system, this would be a requisite or a requirement for you to file an EWPP.

As Mr Cooper alluded to in his presentation, this would greatly put more pressure on the Ministry of Labour, more specifically the Ontario Labour Relations Board. As we well know from the most recent cuts to all government sectors, the Ontario Labour Relations Board was substantially depleted in its workforce. Forcing us, as employees and unions, to go that route would no doubt put a greater strain on this depleted part of the Ministry of Labour.

The Chair: We're at time, so if you have any brief concluding comments, I'll allow them.

Mr O'Brien: In conclusion, I'd just maintain that Bill 49 is counterproductive to everything that would recover funds for employees. It's counterproductive to a good working society, as Mr Cooper alluded to, and basically it just has no part in a harmonious labour relations society within the province of Ontario.

The Chair: Thank you both. We appreciate your taking the time to make a presentation before us here today.

GERARD VAN DEELEN

The Chair: With that, we come to our last presentation of the day. I'll go back on the agenda to Gerard van Deelen. Good afternoon. Welcome to the committee. Again, we have 15 minutes for you to divide between presentation or questions and answers.

Mr Gerard van Deelen: Let me start off by saying that my expertise in this matter is not as great maybe as it once was when I was more employed in the province. I'm actually a federal employee, but all the same a temporary employee, and I'd just like to address a few things in that area.

When you're fired unjustly or laid off, in my position as a temporary employee, you don't necessarily get severance pay. If you're laid off, you don't get a layoff notice. You have no chance of becoming a full-timer based on calculation of hours, as occurs in the present system, and therefore no chance of part-time.

I'd hate to see temporary employees or temporary status become more reflected in the act as it stands now. Basically, I'm proud of the labour act we have at the moment — well, not the labour act so much any more,

but the Employment Standards Act. I think it's something to be proud of when you compare it to the federal one which has a lot of vagueness attached to it.

The work I do, of course, as a temp is even worse than your own definition of a temporary worker might be who has a contract for a certain period of time, like six months, a year, whatever. I live day by day. That's as long as my contract lasts. We have little rights except for the rights that are given to us by the union I belong to, and they're not the same rights by any measure.

Now I'd like to address some of the areas of the act that I think need criticizing.

The claims area, changing it to six months instead of two years: I have a problem with finding out where the data is — perhaps it's out there — to support that only 10%, from fact sheets I've received from the government, file later than two years; that it's such an undue hardship that we have to deal with this 10% out of the 90% that are dealt with in a shorter period.

The problem with cutting the two years' limitation is something that relates to the education of people in this province. There's not a lot of education given people on their rights in the workforce. You don't get that in school. I don't know exactly where you pick that up, but that's what you do, you pick it up somewhere. So I would guess that the longer the limitation period, the better, because it takes people that long sometimes to even notice that they're being violated.

If the government's bound to proceed with this — I haven't seen the formalized wording, but because it's not clear as to when this six months' limitation, if that's what they go with, would start, I would ask them to perhaps add the limitation period to start from when the employee first became aware of the violation.

The other aspect of sending it to the courts instead, if you wanted to go past that limit, I can't agree with that, because I don't think the courts are the venue for this type of problem. The cost involved — the knowledge once again is even probably more obstructive or unhelpful, let's say, than the employment standards people, which I have dealt with in the past.

The \$10,000 limit: Once again, I've tried to figure out some examples for you, although it was hard, because I was dealing with if someone pays someone a dollar less than the hourly wage, infractions of that kind, and you're coming up to maybe over a year, maybe \$3,000, stuff like that. Apparently, from your fact sheets once again, it involves more executives who are getting a lot higher pay. I don't want to close the book on that. I'm sure there are instances where the \$10,000 or more is necessary. Once again, your fact sheets say 4% of the claims are higher than \$10,000, so I'm wondering what the big deal is just to knock it off at that point just because the number is 4%. Is it that much to justify installation of a cap?

The other area that's not addressed is firings or unjust dismissals, which is not addressed in the act. Obviously there you're going to come into something more than \$10,000. Whether or not people are going to take that to the courts every time, once again, I refer back to the problem with education in this area. People just don't

know that they have that avenue, and once again, it's a more costly avenue.

The mention of private agencies taking over collection of fines etc: I'm not sure how that's going to work, because I don't know if we have any specialists in that area. You talk about putting it up to tender to specialists. Who are the specialists in collecting from employers for these fines? I've always thought it was the government. So I don't know if I will trust anyone myself who enters into that business. Are they guaranteed to be impartial? The chance for them to be swayed by an employer, I think, is a lot more possible, rather than the government.

The same goes for the right to mediate complaints before investigation. I don't think that's a wise choice either, because once again you're giving the employer a bit more chance to change things without a full investigation happening. I've known a few employers, and by that, I think it extends to more than a few. It puts the intimidation into their hands, and that is not a good thing.

1710

The improvements: I came to just some of those, but I understand now there's going to be a bigger overhaul of the act in the future, so I'll leave that and won't address that today. That's not to say I don't hope to be here again in front of you. I've many suggestions for improvement in the areas of overtime, lunch breaks and the minimum wage.

That completes my presentation. Thank you very much.

The Chair: Thank you very much. That allows us just under two minutes per caucus for questioning. This time it will commence with the third party.

Mr van Deelen: Actually, if I can just say one more thing — sorry, third party — I found one more discrepancy on your fact sheet where it talks about not setting a minimum claim at this time. But in one of the last paragraphs it says employees will be able to go to court to settle claims above the maximum or below the minimum limits on claims. So in one paragraph you've said there is not a minimum at this time, but then the other one refers to a minimum. I just bring that to your attention. Sorry.

Mr Christopherson: Thank you for your presentation. Just on your last point, let's not kid anybody: You don't put in enabling legislation that allows you to regulate something unless you have some plan to regulate it. So the fact that they're not going to do it right away, you're right to point out, is not the issue. The fact is, they're planning to.

Our concern, of course, is that over the years, when there's some political public attention on when they first do it, they may do less than where it would ultimately be after a few years, and it slowly starts to creep up so that we're up into the hundreds and hundreds of dollars, which of course is, in some ways, just legitimizing theft, because there are workers who, as you've rightly pointed out, don't use the court system or couldn't afford to, or the amount of money they've been ripped off for is less than the cost of going to court. I understand it's about \$65 or \$70 just to initiate a claim. So if you've been ripped off for \$50, which happens to be half the amount of money you're getting in a week's pay, because it's

part-time work, you're out of luck; you're beat. So that's a real concern for us.

I want you to know that as we've travelled around the province, the government members on this committee have consistently refused to admit all the points that you raise today about things that are takeaways in terms of rights. The vast majority of people who have made presentations have been taking that position — the overwhelming majority. Still, this government will not admit to you right now, no matter how hard you push, that you're going to lose rights and that other workers are going to lose rights. You might want to take whatever time you have with them to see if you can push them to admit that this is not an act to improve anything; this is taking away and gutting rights that I think you're correct to be proud of.

I wanted to ask you one question, and that was the six months and two years. In your experience, do you think there are people who will lose money because they're afraid to make a claim while they're still working for a bad boss, because they're worried they'll get fired if they make a complaint to enforce their rights?

Mr van Deelen: Yes, clearly. I also think the amount of time from when they actually find out that they got screwed, to put it bluntly — there's no guideline that I can see there. They could go on for a year at this job without knowing that they've been getting the shaft, and then it's going to be too late.

Mr Christopherson: Watch for the dodge. They're not going to deal with that stuff, so get ready for it.

Mr O'Toole: Thank you very much, Gerard. I appreciate your presentation. You seem very sincere and I think we all are as well.

At the end you alluded to the improvements you could make in overtime and lunch breaks etc. It's important to recognize that the world changes through technology, through government, whatever. Do you think the act is really in need of change? It's some 20 years old. You suggested there could be changes.

Mr van Deelen: In those areas, yes, and hopefully you'll invite me back.

Mr O'Toole: Flexibility sort of thing?

Mr van Deelen: No, I wouldn't say flexibility, I would say change. To give you one example, let's look at something like lunch breaks. Right now it stands at five hours. I used to be in a position under these regulations where a lot of the time we only worked six and half hours in a day, so we would be pushed not to have lunch at all, to get finished the work faster and go without lunch. So I would suggest moving it to four hours. The normal shift, unless that gets changed, has been an eight-hour shift. Let's move it right to the middle. For people who only work six hours, at least they're more likely to get their lunch if it's closer.

Mr O'Toole: Most government jobs today, though, aren't 40 hours either.

Mr van Deelen: Most what jobs?

Mr O'Toole: Most government jobs aren't 40 hours; they're 32 or some combination thereof, 32 to 35, 36.

Mr Baird: Eighty-five.

Mr O'Toole: All I'm saying is you have to modernize it. You've recognized that there should be workplace discussion. There's a very important section in part 2 of these employment standards debates or discussions. That's what we really want to hear: what will work. We don't want, at the end of our term, to have something that doesn't work. You'd think a little more highly if —

Mr van Deelen: Of course, I wasn't addressing government jobs. I think you're talking about government jobs, you're saying?

Mr O'Toole: I thought you said you worked for the federal government.

Mr van Deelen: Yes. Okay.

The Chair: Moving to the official opposition, it would be Mr Hoy.

Mr Hoy: Thank you very much for your presentation. You mentioned the \$10,000 maximum cap and that the fact sheet from the government suggested that executives or people with high incomes generally are claiming in those amounts, but we've had significant numbers of presentations that suggest otherwise. To reach those dollar amounts, perhaps the people were given NSF cheques. They waited for a while in hopes that the employer would eventually have good cheques, and that's how they exceeded those amounts. They were asked to give the employer some time to come up with the money and it just simply didn't happen. So when you were looking at a dollar less than the minimum wage and trying to work out figures, there are examples, and I wanted you to know that there are significant numbers of examples where low-income earners exceed \$10,000.

I was in a store one time, and on the back of the door there were suggested questions to ask people who were making purchases for the employees to memorize, to learn and to refer to in order to increase the sales of the store. It also had instructions on how to clean the lunchroom and how to pay to buy your pop or sandwiches or whatever. There were all manner of suggestions in that lunchroom area. You were wondering about awareness and how people know their rights. Do you think it would be helpful to have employment rights published in the workplace prominently somewhere in the building?

Mr van Deelen: Yes, a good suggestion. I should have thought of that. Yes, much like the WCB health and safety guidelines. I think that's a good idea.

Mr Hoy: I appreciated your presentation.

The Chair: Thank you for making your presentation before us here this afternoon. We appreciate it.

Mr van Deelen: Thank you.

The Chair: With that, the committee stands recessed till 9 o'clock tomorrow morning in this room.

The committee adjourned at 1718.

Continued from overleaf

Amalgamated Transit Union, Local 1573	R-1459
Mr Andre Monette	
Mr Tim Rourke	R-1461
Workers' Information and Action Centre of Toronto	R-1462
Mr Rob Maxwell	
Canadian Auto Workers, Local 222	R-1465
Mr Mike Shields	
Power Workers' Union	R-1467
Mr John Murphy	
Service Employees International Union, Local 204	R-1470
Ms Judy Christou	
Ms Joy Klopp	
Labourers' International Union of North America, Local 183	R-1472
Mr Keith Cooper	
Mr Michael O'Brien	
Mr Gerard van Deelen	R-1474

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*Mr Jerry J.	Ouellette (Oshawa PC)
*Mr Joseph N.	Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Bert	Johnson (Perth PC) for Mrs Fisher
Mr John	O'Toole (Durham East / -Est PC) for Mr Carroll
Mr E.J. Douglas	Rollins (Quinte PC) for Mr Murdoch
Mr Wayne	Wettlaufer (Kitchener PC) for Mr Maves

Also taking part / Autres participants et participantes:

Mr Chris	Stockwell (Etobicoke West PC)
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Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Ray McLellan, research officer, Legislative Research Service

CONTENTS

Wednesday 11 September 1996

Employment Standards Improvement Act, 1996, Bill 49, <i>Mrs Witmer</i> / <i>Loi de 1996 sur l'amélioration des normes d'emploi</i>, projet de loi 49, <i>M^{me} Witmer</i>	R-1415
Whitby Chamber of Commerce	R-1415
Mr Marc Kealy	
Mr Jeff Crump	
Downtown Legal Services	R-1418
Ms Catherine Glaister	
Ms Anita Bapooji	
Oshawa-Clarington Chamber of Commerce	R-1420
Mr Peter Mitchell	
Metro Toronto Chinese and Southeast Asian Legal Clinic	R-1423
Ms Avvy Go	
Board of Trade of Metropolitan Toronto	R-1425
Mr Sandy Douglas	
Mr David Brady	
32 Hours: Action for Full Employment	R-1427
Mr Anders Hayden	
United Steelworkers of America, Local 5296	R-1430
Ms Renate McIntosh	
Society of Ontario Hydro Professional and Administrative Employees	R-1432
Mr Mario Germani	
Ms Mundy McLaughlin	
Labour Council of Metropolitan Toronto and York Region	R-1434
Mr David Kidd	
OPSEU Lesbian and Gay Action Committee, Region 5	R-1437
Ms Robin Gordon	
519 Church Street Community Centre	R-1439
Ms Alison Kemper	
Ontario Public Service Employees Union, Local 525; Parkdale Workers Without Wages	R-1441
Mr Bart Posiat	
Ms Marjorie Frutos	
Alliance of Seniors to Protect Canada's Social Programs	R-1444
Mr Joe Jordan	
Mr Tony Michael	
United Brotherhood of Carpenters and Joiners of America	R-1446
Mr Daniel McCarthy	
Committee on the Status of Women, City of Toronto	R-1448
Ms Pam McConnell	
United Food and Commercial Workers International Union	R-1450
Mr Bryan Neath	
Mr Brian McArthur	
Ms Belisa Paulo	R-1453
Committee on Monetary and Economic Reform	R-1455
Ms Sydney Marcus-White	
Durham Regional Labour Council	R-1457
Mr Tim Eye	

Continued overleaf



3 1761 1146995 5

